

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 VS. CR. NO. 15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.
8

9 Transcript of Motion Proceedings and 104 Hearing
10 before The Honorable James O. Browning, United States
11 District Judge, Las Cruces, Dona County,
12 New Mexico, commencing on March 15, 2018.

13 For the Government: Ms. Maria Armijo; Mr. Matthew
14 Beck

15 For the Trial 2 Defendants: Mr. Brock Benjamin, Ms.
16 Cori Harbour-Valdez; Mr. Patrick Burke; Mr. Jim
17 Castle; Mr. Robert Cooper; Mr. James Lahann; Mr. Joe
18 Shattuck; Mr. John Granberg; Mr. Eduardo Solis; Mr.
19 Billy Blackburn; Mr. Donovan Roberts; Ms. Lisa
20 Torracco; Angela Arellanes

21 For the Defendant Lujan: Mr. Dean Clark

22 For the Defendant Clark: Mr. Stephen Hosford
23
24
25

1 THE COURT: All right. Let's go on the
2 record. It seems that we have an attorney for every
3 defendant. Look around the room and help me out, but
4 it looks like that's the case.

5 The next motion that we had was Mr. Troup
6 and Mr. Billy Garcia's motion for production of
7 co-conspirator statements and for pretrial hearing
8 admissibility. But as I heard people coming in -- we
9 may have already dealt with most of that issue -- but
10 as I heard people coming in, they were saying that
11 they may need to get witnesses on and off.

12 Let me ask y'all before I start plowing
13 ahead, do y'all have some needs as far as witnesses,
14 or need to go a particular direction? Mr. Beck?

15 MR. BECK: Yes, Your Honor. I think the
16 intention is to go to Mr. Benjamin's motion to
17 suppress that we sort of bypassed last night, so we
18 can get a New Mexico State Police agent back on the
19 road. And then Special Agent Trent Pedersen is here
20 from Utah. He would be Billy Garcia and Troup's
21 motions to dismiss for preindictment delay. And he
22 needs to get back to Utah tonight.

23 THE COURT: So we're just going to take
24 some witnesses; they're not necessarily the same
25 motion, but we'll just get some witnesses out of the

1 way; is that your --

2 MR. BECK: I think there will only be the
3 one witness for Mr. Benjamin's motion -- or motion to
4 suppress.

5 MR. BENJAMIN: I think it's fairly simple,
6 and I would hope, open and shut issue, Your Honor. I
7 was going to talk to Ms. Armijo about essentially a
8 stipulation.

9 THE COURT: Okay, go ahead.

10 (A discussion was held off the record.)

11 MR. BENJAMIN: Your Honor, I'm ready to
12 proceed on Mr. Gallegos' motion to suppress
13 statements.

14 THE COURT: Okay. Are we going to have
15 argument first? Is that what we're going to do?

16 MR. BENJAMIN: What I'm going to do, Your
17 Honor, is move to admit Defendant Gallegos' Exhibit
18 A1 and A2, which is an excerpt of a November -- it's,
19 essentially, the relevant excerpt from a November 20,
20 2012 interview of Mr. Joe Gallegos by Agent
21 Williamson and Agent Mowduk, M-O-W-D-U-K. Williamson
22 is common spelling. And I would move to admit those
23 for the purposes of this hearing, Your Honor.

24 THE COURT: Any objection, Ms. Armijo?

25 MS. ARMIJO: No, Your Honor. I'm going to

1 be moving in the entire transcript for the Court to
2 consider, but I don't oppose those two.

3 MR. BENJAMIN: And I don't oppose the
4 entire transcript, Your Honor. And as we're moving
5 in the entire transcript, any objection to offering
6 it? I'll put it on a CD, the audio for -- the actual
7 audio, Your Honor. It was a recorded transcript. I
8 think it's, for my purposes, I believe, easier to
9 understand in the written form.

10 May I approach the exhibit, Your Honor?

11 THE COURT: You may. Is there any other
12 objection to Defendant Joe Gallegos' Exhibits A1 and
13 A2? Not hearing any, Defendant Joe Gallegos'
14 Exhibits A1 and A2 will be admitted into evidence.

15 MR. BENJAMIN: Your Honor, when the Court
16 considers A1 and A2, which are pages 5 and 6 -- that
17 I have marked backwards -- out of the statements, the
18 defendant was Mirandized on page 4, and as the
19 Government has moved to admit that entire document,
20 and the audio that we've moved to admit, Your Honor,
21 the Court can see that he was Mirandized. And then
22 agent -- the agent follows up with -- started on page
23 5, which is labeled A2: "Basically, these four
24 rights. Do you understand these rights?"

25 Joe Gallegos says, "Yes, sir."

1 Agent Mowduk says, "Okay. With these
2 rights in mind, do you want to talk to us?"

3 Joe Gallegos at that point in time says, "I
4 don't want to make no statements." And he explains
5 why he does not want to make any statements.

6 The agents continue, and then he, Mr.
7 Gallegos, essentially says on page 6 at the top, "So
8 I would rather not talk to anybody, you know what I
9 mean? No disrespect. I just" -- and then is
10 interrupted by Agent Mowduk again. And I think
11 coming immediately following the Miranda statements,
12 there can be no other way to construe: "I don't want
13 to make no statements" as an assertion of his right
14 to remain silent under Miranda.

15 Agent Mowduk and Agent Williamson then
16 continue for approximately a minute or two discussing
17 a lot of things, and then trying to -- the phrase
18 that comes to mind that I've used in state court,
19 Your Honor, respectfully, is just sweet-talk him, or
20 butter him up, and then get him to begin talking.
21 And there is nothing relevant that is discussed for
22 about 20 minutes. And so they are simply
23 disregarding his very clear and very blanket: "I
24 don't want to make no statements." And then he
25 reiterates that, as I said, essentially, two

1 responses later. And so I think that I would ask the
2 Court -- and this is why I excerpted these two pages,
3 that I think it's quite clear that he asserted his
4 right to remain silent.

5 And that's the extent of the evidence on
6 this. As I said, Your Honor, I think it's fairly
7 open and shut.

8 THE COURT: All right. Thank you, Mr.
9 Benjamin.

10 MR. BENJAMIN: May I approach Ms. Bevel?

11 THE COURT: You may.

12 MR. BENJAMIN: Thank you.

13 THE COURT: I did listen to these on
14 Saturday. So this is the one that you filed in
15 response to the motion, right?

16 MS. ARMIJO: Yes, Your Honor.

17 THE COURT: Okay. I listened to that. In
18 the folder for that there was also another tape. And
19 I wonder if it just -- the clerk's office -- there
20 were several documents on this. There was an Exhibit
21 B, which was an account transaction history for Eric
22 Duran. And then there was also exhibits that Mr.
23 Lowry submitted as a supplement to his motion to
24 compel immediate production of Brady and Giglio, and
25 he attached a CD as well. Do those have anything to

1 do -- they were in the folder for this motion, but it
2 was just this one. I listened to all of them, but --

3 MS. ARMIJO: No, Your Honor.

4 THE COURT: They don't have anything to do
5 with it?

6 MS. ARMIJO: No.

7 THE COURT: Okay. All right. Anyone else
8 want to say anything on this motion before we hear
9 from Ms. Armijo?

10 All right. Ms. Armijo.

11 MS. ARMIJO: And, Your Honor, I do have the
12 witness available to put it in context. Our position
13 is that it was an equivocal statement, not
14 unequivocal. And that he eventually does ask for an
15 attorney at the very end. And the transcripts that
16 we will tender will be Exhibits 1 and 2, and so I
17 think that we could probably do it with just very
18 limited testimony from Agent Williamson.

19 THE COURT: Okay. Mr. Williamson, if
20 you'll come up and stand next to the witness box on
21 my right, your left, before you're seated, Ms. Bevel,
22 my courtroom deputy, will swear you in.

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 RICHARD WILLIAMSON,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please state your name, and
6 spell your last name for the record.

7 THE WITNESS: My name is Richard
8 Williamson, W-I-L-L-I-A-M-S-O-N.

9 THE COURT: Mr. Williamson. Ms. Armijo.

10 MS. ARMIJO: Thank you, your Honor.

11 BY MS. ARMIJO:

12 Q. And, sir, how are you employed?

13 A. Currently, I'm a Sergeant for the New
14 Mexico State Police, serving in the Special
15 Operations Bureau.

16 Q. And Sergeant, how long have you worked for
17 New Mexico State Police?

18 A. I've been in law enforcement for 17 years,
19 and all but three and a half years of that were with
20 State Police.

21 Q. And we're going to go back to 2012. What
22 was your assignment then?

23 A. At that time I was serving as a criminal
24 investigations agent in Albuquerque.

25 Q. And were you assigned to work an

1 investigation that involved the death of Adrian
2 Burns?

3 A. I was assigned as the case agent.

4 Q. And in that regard at some point in time,
5 was Joe Gallegos arrested pursuant to -- well, was he
6 arrested?

7 A. He was.

8 Q. Do you recall when that was?

9 A. That was November 20, 2012.

10 Q. And when was Adrian Burns' body discovered?

11 A. November 12, 2012.

12 Q. And do you recall if you received a warrant
13 for Joe Gallegos' arrest?

14 A. We did.

15 Q. And when was that obtained, approximately?

16 A. I don't recall the exact date. It was just
17 a few days after the discovery of Adrian's body, and
18 shortly before the 20th.

19 Q. Okay. So sometime between the 12th and the
20 20th?

21 A. Yes.

22 Q. And is it fair to say that you had spent
23 some time looking for Joe Gallegos?

24 A. Yes.

25 Q. And when he was arrested, where was he?

1 A. At a motel in Albuquerque.

2 Q. Just so that we're clear, where was it that
3 Joe Gallegos had been residing at that time?

4 A. At No. 4 Aaron Court in Los Chavez, or Los
5 Lunas, New Mexico.

6 Q. All right. Was it your impression that Joe
7 Gallegos was on the run from law enforcement?

8 A. That was our impression, yes, ma'am.

9 Q. When you arrested him, did you have an
10 opportunity to question him?

11 A. We did.

12 Q. And where did that take place?

13 A. At the New Mexico State Police office in
14 Albuquerque.

15 Q. And when did it take place?

16 A. That evening, continuing into early
17 morning.

18 Q. Do you recall approximately what time it
19 was that he was arrested?

20 A. I believe it was around 8:30 on the 20th.

21 Q. And were you present when he was arrested,
22 or did you have to be called in?

23 A. I was called in.

24 Q. And so when you met with him for the first
25 time, was it at the police station, the New Mexico

1 State Police station in Albuquerque?

2 A. Yes.

3 Q. And approximately what time was it that you
4 first met with him?

5 A. I believe it was around 8:30, 8:45. I'm
6 not real sure. I don't recall.

7 Q. Okay. And when you spoke to him, what was
8 the setting?

9 A. We were in an interview room, myself and
10 Agent Jim Mowduk, a very small room with a table and
11 three chairs.

12 Q. And was it recorded?

13 A. It was.

14 Q. And how was it recorded?

15 A. Audio and visual, through the system that
16 was there in that interview room.

17 Q. Okay. So it was audio and visual?

18 A. Yes, ma'am.

19 Q. And you indicated you had another agent
20 present?

21 A. Yes.

22 Q. And how were you dressed?

23 A. I think at that time I was probably much
24 like this, but without the coat and tie.

25 Q. You weren't in a uniform?

1 A. No, I was in plainclothes.

2 Q. Did you have a visible -- a firearm
3 visible, if you recall? And you may not recall.

4 A. I don't recall. But we generally did carry
5 our firearm, so --

6 Q. And in the room when you met with Mr.
7 Gallegos, was he handcuffed?

8 A. He was.

9 Q. And throughout the interview did he remain
10 handcuffed?

11 A. Before we began the interview, he was
12 handcuffed behind his back, as we generally do for
13 transport. Before the interview, I made him more
14 comfortable by placing his handcuffs in front.

15 Q. Did you ascertain whether or not he needed
16 to use the facilities or needed any water or anything
17 like that.

18 A. We did. Agent Mowduk asked him.

19 Q. And did he make any requests?

20 A. No. He said he was fine.

21 Q. Now, before I get into the actual -- your
22 actual conversation with him, at any point in the
23 conversation, did he appear to be incoherent or
24 unable to understand you?

25 A. Not at all.

1 Q. Did he appear to be under the influence of
2 any drugs to the extent that you were concerned about
3 his mental ability to understand your questions?

4 A. No, he did not.

5 Q. At any point in time, did it appear to you
6 that he was having difficulty comprehending what you
7 were saying?

8 A. No.

9 Q. At any point in time -- and I'm talking
10 about the entire time that you conversed with him --
11 did you use any force or threats against him?

12 A. No.

13 Q. At any time did you make him any promises?

14 A. No.

15 Q. Was there actually a break in the interview
16 at some point?

17 A. There was.

18 Q. Okay. And can you explain that to us?

19 A. We took a break so he could use the
20 restroom, get a drink. So he was allowed to do that.

21 Q. And approximately how long was your entire
22 conversation with him?

23 A. The entire conversation, I believe, was
24 about an hour and 37 minutes. And I don't recall if
25 that includes the first discussion and the second

1 discussion combined, or how that breaks down.

2 Q. I know you probably haven't had an
3 opportunity to, but the defense has had the
4 transcript -- or the recording transcribed. So I'm
5 going to go ahead and hand that -- actually, I think
6 you have a copy in the back. But at some point, was
7 he read his rights?

8 A. At the very beginning, yes, ma'am.

9 MS. ARMIJO: All right. And Your Honor,
10 may I have the Elmo?

11 THE COURT: You may.

12 Q. And Sergeant, I'm looking at what's
13 Government's Exhibit 1 and 2, which I'm moving in for
14 purposes of this hearing with no objection.

15 THE COURT: No objection?

16 MR. BENJAMIN: No, Your Honor.

17 THE COURT: Anybody else? All right.
18 Government's Exhibits 1 and 2 will be admitted into
19 evidence.

20 Q. All right. Now -- and I'm referring to
21 page 4 of this. And here it says, "Since you are in
22 handcuffs, since you were transported in a unit and
23 all that stuff, I can't talk to you unless I advise
24 you of your Miranda rights. So what I need to do is
25 advise you of your Miranda rights. And I'll do that

1 verbally from a card." Does that appear to be what
2 was said to Mr. Gallegos?

3 A. It does, by Agent Mowduk.

4 Q. All right. Then I'm going to go to page 5.
5 And at some point here it says, Agent Mowduk -- it
6 says, he indicated, "I don't want to make no
7 statements because I've been -- I know you checked my
8 record" -- and then he goes on to explain that he's
9 been taken advantage of in the past, and he doesn't
10 have trust for people; is that correct?

11 A. That's correct.

12 Q. And then what did you indicate to him after
13 that?

14 A. That his mother had indicated to us, in our
15 conversations with her, that they did want to make a
16 statement to give their side of the story.

17 Q. And was that true?

18 A. Yes. Agent Mowduk had been talking to her
19 for about three or four days prior to that. As far
20 as I knew, that was what he indicated.

21 Q. Okay. And so you were informing him of
22 that?

23 A. Yes.

24 Q. And then he goes on to talk to you for a
25 bit. And I'm going to go to page 6 of that. Then at

1 some point he says, "So I would rather not talk to
2 anybody, you know what I mean? No disrespect." Is
3 that something that he said?

4 A. I believe so, yes.

5 Q. And then what did you all do?

6 A. We just gave him some more information, and
7 Agent Mowduk sort of explained why he was there, and
8 what was going to happen.

9 Q. Okay. Now -- and then after that, did he
10 ever indicate to you unequivocally that he did not
11 want to speak to you?

12 A. Not that I recall. He said that he did
13 have some things that he would like to state.

14 Q. Okay. And is that something that he did
15 say to you after all?

16 A. Yes. It's in the recordings. I'm not sure
17 if it's in the transcript or not.

18 Q. Okay. But in the recordings he did
19 indicate to you that he wanted to speak to you?

20 A. Correct.

21 Q. Okay. And then did he speak to you?

22 A. He did.

23 Q. Now, I know we already talked about at some
24 point in time that there was a break; correct?

25 A. Correct.

1 Q. And then after the break, at some point
2 towards the end of your conversation with him, did he
3 indicate he wanted an attorney?

4 A. He did.

5 Q. All right. And I'm going to go to Exhibit
6 Number 2, page 24. At least this is one of the times
7 he says, "I'd just like a lawyer and that's it"?

8 A. Yes, ma'am.

9 Q. Then do you clarify that? And then he says
10 again, "I just want a lawyer"; correct?

11 A. Correct. And Agent Mowduk advised, "You'll
12 get a lawyer."

13 Q. All right. And then it's after that that
14 the interview concludes; correct?

15 A. Yes, ma'am.

16 Q. Okay. Now, prior to that, prior to what we
17 are seeing on this and what is on the recording, did
18 he ever absolutely say to you: "I want a lawyer"?

19 A. Not that I recollect, or we would have
20 stopped.

21 Q. And other than the beginning, where he's
22 talking to you about whether or not -- I don't want
23 to misquote it -- where he says that, "I don't want
24 to make no statements because I know you checked my
25 record," and then he goes on to talk --

1 A. Yes.

2 Q. Other than that -- or after he made that
3 statement, did he continue to talk to you and he
4 indicated that he wanted to talk to you?

5 A. He did.

6 Q. And did you take that to mean, given that
7 he still continued to talk to you, and he didn't
8 absolutely say -- that he didn't say "I don't want to
9 talk to you," is that why you continued to talk to
10 him?

11 A. Yes.

12 MS. ARMIJO: Thank you. I pass the
13 witness, Your Honor.

14 THE COURT: Thank you, Ms. Armijo.

15 Mr. Benjamin, do you have cross-examination
16 of Mr. Williamson?

17 MR. BENJAMIN: Yes, Your Honor.

18 THE COURT: Mr. Benjamin.

19 MR. BENJAMIN: May I approach the exhibits?

20 THE COURT: Do you want your A1 and A2
21 back?

22 MR. BENJAMIN: No, I'll use the
23 Government's.

24

25

1 CROSS-EXAMINATION

2 BY MR. BENJAMIN:

3 Q. Agent, you testified that Mr. Gallegos was
4 located at about 8:30, you didn't say a.m., but
5 that's about 8:30 a.m.; correct?

6 A. P.m., I believe. It was in the evening.

7 Q. Would it surprise you if your report says
8 your interview started at 6:55?

9 A. In the evening?

10 Q. Yes.

11 A. No. That was five years ago, so that
12 wouldn't surprise me.13 Q. So Joe Gallegos wasn't located at 8:30, if
14 you're talking to him at the State Police
15 headquarters at 6:55 p.m.?

16 A. It wouldn't appear so.

17 Q. Do you know what time he was arrested?

18 A. Not off the top of my head, no, sir.

19 Q. Would it surprise you if it was earlier in
20 the day, closer to early afternoon or noon?21 A. It would because I recall it being later;
22 early evening or late afternoon, is my recollection
23 anyway.24 Q. But if I direct you to essentially what's
25 been admitted as Government's Exhibit 1, the

1 beginning of the recording is at 6:55 p.m.; correct?

2 Are you able to read that, sir?

3 A. No -- oh, there it is, yes, sir.

4 Q. Okay. And based upon your experience,
5 between the time that an individual gets arrested --
6 because he was arrested and located at a motel by
7 Marshal Task Force, so you didn't respond there
8 immediately; correct?

9 A. Correct.

10 Q. And then you went to the hotel?

11 A. Correct.

12 Q. And then, essentially, talked to people,
13 tried to get a handle on some things, and then went
14 to the State Police headquarters, right?

15 A. Correct.

16 Q. Okay. And forgive me, but none of that
17 government operation is what we might call very
18 efficient or done very quickly, right?

19 A. Which part of that?

20 Q. The marshals arriving, securing a scene,
21 arresting an individual, talking to the two females
22 that were there as well, and then transporting
23 somebody to State Police headquarters?

24 A. I believe it was as efficient as possible,
25 yes, sir.

1 Q. I didn't mean that an insult, sir, I'm
2 sorry. But that's not done -- the arrest -- the
3 location wasn't discovered at 6:00, and then they
4 we're in the headquarters at 6:55?

5 A. I don't believe so.

6 Q. Okay. And so the interview you said was an
7 hour and 30 minutes, but it starts -- would you
8 disagree with this timeline -- that it starts at
9 6:55; there is a break at 8:31 p.m.; the interview
10 resumes at essentially midnight, or 12:04 p.m., and
11 then ends at 12:27 p.m. -- or a.m. -- I'm sorry,
12 a.m.?

13 A. Yes, sir.

14 Q. Okay. And so that's not an hour and 30
15 minutes. That's, essentially, if you do the math
16 essentially right at five-and-a-half hours of
17 interview time?

18 A. Well, he wasn't being interviewed the
19 entire time.

20 Q. But he was in the interview room, sweating?

21 A. He was in the interview room. I don't
22 recall if he stayed in that room or if he was moved
23 to a holding cell. Actually, there is a comment in
24 there about it being cold, so I don't think he was
25 sweating.

1 Q. Forgive me. "Sweating" was meant slightly
2 different.

3 You'd said that the mother indicated that
4 he wanted to make a statement?

5 A. I believe that's what Agent Mowduk
6 indicated, yes, sir.

7 Q. Ms. Gallegos -- it's Tina Gallegos;
8 correct?

9 A. Correct.

10 Q. She indicated they were going to turn
11 themselves in from the 15th as well; correct?

12 A. Yes. And every time Agent Mowduk spoke
13 with her, it was going to be the next day, the next
14 day.

15 Q. And he spoke to her, essentially, looking
16 at the reports, it looks like probably two times a
17 day or so?

18 A. Yes, sir.

19 Q. He was fairly persistent in following up on
20 things?

21 A. Yes, sir.

22 Q. Okay. So when you provided Joe -- when
23 Agent Mowduk provided Joe Gallegos his rights, what
24 was unequivocal about, "I don't want to make no
25 statements"?

1 A. We continued to have a discussion anyway,
2 whether we were just providing facts or providing him
3 an opportunity to speak. Until he asked for a
4 lawyer, we were going to continue to talk to him.

5 Q. You told him he had a right to remain
6 silent; correct?

7 A. Correct.

8 Q. It doesn't say -- well, right below that it
9 says: "You have a right to an attorney"?

10 A. Correct.

11 Q. It says, "You have a right to remain
12 silent"?

13 A. Correct.

14 Q. When he said, "I don't want to make no
15 statements," what part of that was unequivocal that
16 he didn't want to talk to you?

17 A. It wasn't. That was clear. We -- after
18 that point, I don't believe the next things that we
19 said to him were questions. I believe they were
20 informative. And then he stated he did have some
21 things he would like to state. And that's where we
22 began to have more of a discussion. But I don't
23 recall exactly what was said immediately after,
24 but --

25 Q. Okay. So the statement, "Well, your mom

1 had kind of indicated that you wanted to make a
2 statement," isn't prodding him to make another
3 statement?

4 A. It's just providing him with information
5 that we had. And then he reaffirms, on page 6, that
6 I would rather not talk to anybody, right?

7 A. Correct.

8 Q. What's unequivocal about that?

9 A. No, that's clear.

10 MR. BENJAMIN: Pass the witness, Your
11 Honor.

12 THE COURT: All right. Thank you, Mr.
13 Benjamin.

14 Anyone else have any questions? All right.
15 Mr. Williamson, you may step down.

16 MS. ARMIJO: Your Honor?

17 THE COURT: Do you have something further?

18 MS. ARMIJO: Yes.

19 THE COURT: Okay, Ms. Armijo.

20 REDIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Is there a difference to you between
23 someone saying: I want to invoke my right to remain
24 silent, and I don't want to make statements?

25 A. Yes.

1 Q. And what's your understanding of that?

2 A. My understanding would be that he wasn't
3 really ending the conversation. He just didn't want
4 to make any statements about anything or any facts.
5 He did give us the impression that he wanted to
6 continue to talk to us. He wanted to find out what
7 was going on. And we wanted to provide him
8 information. So we would continue that conversation
9 until he said: I don't want to talk anymore, or I
10 want to be silent, or of course when he said, "I
11 would like a lawyer."

12 Q. And did he indicate to you that he did, in
13 fact, want to make a statement?

14 A. In those exact words, he said, "There is
15 some things I'd like to state."

16 Q. All right. And is that what led you to
17 continue the conversation?

18 A. Yes, ma'am.

19 Q. All right. Nothing further. Thank you.

20 THE COURT: Thank you, Ms. Armijo.

21 MR. BENJAMIN: One second. I may have --

22 THE COURT: You may.

23 MR. BENJAMIN: Pass the witness, Your
24 Honor.

25 THE COURT: All right. Mr. Williamson, you

1 may step down. Is there any reason that Mr.
2 Williamson cannot be excused from the proceedings,
3 Ms. Armijo?

4 MS. ARMIJO: No.

5 THE COURT: All right. How about from the
6 defendants?

7 MR. BENJAMIN: No, Your Honor.

8 THE COURT: All right. You're excused from
9 the proceedings. Thank you for your testimony.

10 All right. Are there further witnesses
11 that need to be presented, Ms. Armijo?

12 MS. ARMIJO: No, Your Honor. Thank you.

13 THE COURT: How about you, Mr. Benjamin?

14 MR. BENJAMIN: No, Your Honor.

15 THE COURT: All right. Do you wish to
16 argue your motion, Mr. Benjamin?

17 MR. BENJAMIN: I do, Your Honor.

18 THE COURT: Mr. Benjamin.

19 MR. BENJAMIN: I think there is two things
20 that come to mind when I see an interview that was
21 conducted in this manner, Your Honor.

22 Mr. Gallegos was arrested during,
23 essentially for lack of a better term "a duty day."
24 And 18 USC 3501 talks about taking an individual to a
25 United States Magistrate without undue delay. I

1 think in this case it's clear that the tactic that
2 was used was to take Mr. Gallegos into custody, and
3 conduct what is, essentially, a five-and-a-half hour
4 interview of an individual in order to be able to
5 attempt to elicit as many statements as possible, and
6 fish.

7 And the Court noted that it had listened to
8 the hour-and-a-half interview. There is -- it's in
9 circles. There is no quote/unquote admissions made,
10 Your Honor. But they do not listen to what Agent
11 Williamson said was a very -- he said it was clear
12 assertion, that he didn't want to -- that he wanted
13 to remain silent. And I think that that cannot be
14 interpreted as any other way than the response that
15 was given to me. That was a very clear assertion of
16 his intent to remain silent.

17 The agents utterly disrespected that. And
18 if Miranda is to be given any weight, it can't be
19 that we give him information, or we rely on the fact
20 that his mom told us that we wanted this. When he
21 makes one, and then a second assertion of his right
22 to remain silent, that right needs to be respected.

23 I guess the Government's arguing that's
24 unequivocal, and essentially, five hours later, he
25 then wises up and says the magic word "attorney." I

1 don't think that's what case law holds by any means.
2 And so I would submit that the agents in this case
3 intentionally tried different tactics. And the Court
4 is aware of the different tactics that are used, and
5 can take into consideration, having listened to the
6 audiotape, that they utterly disregarded his
7 assertion of his right to remain silent.

8 Pass the witness, Your Honor, or excuse
9 me --

10 THE COURT: Thank you, Mr. Benjamin.
11 Any other defendant wish to speak on this
12 motion?

13 All right. Ms. Armijo.

14 MS. ARMIJO: Your Honor, I think it has to
15 be clear and unambiguous, and it's an objective
16 standard, that he invokes his right to remain silent,
17 or his request for counsel.

18 In this case, if you read the transcript,
19 and if you listen to it, which the Court already has,
20 you can see that Mr. Gallegos is quite smart in
21 giving -- in answering the agent's question. The
22 first part of the interview before the break is
23 really the majority of the interview. So even if the
24 Court were to find it's too long, it should only
25 strike the second part of the interview, which is

1 much shorter, after the break. But the first part of
2 the interview, he answers a great deal of questions
3 to minimize his actions. He does make admissions.
4 He puts the victim at his residence at a certain time
5 period that evening, and confirms -- and I believe --
6 and I'd have to look back at the entire thing -- but
7 yes, he does, he admits that their main source of
8 drug supply was, in fact, Adrian Burns. They were
9 purchasing heroin from him. And he puts Adrian Burns
10 at their residence. So there is statements in there
11 that are incriminating. And given the whole nature
12 of the interview, and the fact that he does not say
13 immediate -- and he does know that he does have a
14 right to an attorney.

15 I think the Court can consider the
16 defendant's age, his background. Clearly the
17 defendant has been arrested before. He talks about
18 how he served 11 years. And the fact that he does
19 actually at some point end up asking for an attorney
20 and the interview ceases, it shows that the officers
21 were, in fact, acting appropriately. And that once
22 he did invoke his right to have an attorney present,
23 they honored that right.

24 So we would ask that the statements before
25 he invokes not be suppressed.

1 THE COURT: All right. Thank you, Ms.
2 Armijo.

3 Anything further, Mr. Benjamin?

4 MR. BENJAMIN: No, Your Honor.

5 THE COURT: Anyone else?

6 Well, I want to think about this a little
7 bit more. But I'll tell you, at the present time,
8 I'm inclined to deny the motion. I think that I
9 agree with the officer: If you just take the one
10 statement -- or the two statements out of context,
11 then I agree they are unequivocal. But I don't
12 understand how his statement on page 5 that, "I don't
13 want to make no statements," and then he repeats a
14 similar one on page 6, is an unequivocal invocation
15 of his right to remain silent, when he just goes on
16 talking. So I think you have to put it in the
17 context of the -- of what is occurring.

18 Also, I'm inclined to think that an
19 invocation of one's right to remain silent, unlike
20 your right to an attorney, does permit the police to
21 continue to talk to a suspect to obtain a subsequent
22 waiver.

23 There is some language in the Supreme Court
24 cases that suggest otherwise. But there are also
25 some statements that indicate that they can continue

1 to talk. And people can waive the right to silence,
2 and then come back -- or not waive the right, but
3 invoke the right to silence, and then come back and
4 waive it. When you look at Michigan versus Moseley,
5 it says, "A reasonable and faithful interpretation of
6 the Miranda opinion must rest on the intention of the
7 court," in that case, "to adopt fully effective means
8 to notify the persons of his right of silence, and to
9 assure that the exercise of the right will be
10 scrupulously honored. The critical safeguard
11 identified in the passage at issue is a person's
12 right to cut off questioning," which doesn't seem to
13 really be the issue here, because the questioning
14 hadn't really begun. "Through the exercise of his
15 option to terminate questioning, he can control the
16 time at which questioning occurs, the subject is
17 discussed, and the duration of the interrogation."
18 And we see that exercised at the end, when he
19 exercised his right to an attorney, and then the
20 interview is over. "The requirement that law
21 enforcement authorities must respect a person's
22 exercise of that option, counteracts the coercive
23 pressure of the custodial setting. We, therefore,
24 conclude that the admissibility of statements
25 obtained after the person in custody has decided to

1 remain silent depends on the Miranda, on whether his
2 right to cut off questioning was scrupulously
3 honored." And we see that later on.

4 At that point the Supreme Court dropped a
5 footnote and said, "The dissenting opinion asserts
6 that Miranda establishes a requirement that once a
7 person has indicated a desire to remain silent,
8 questioning may be resumed only when counsel is
9 present. But clearly the court" -- this is quoting
10 the Supreme Court -- "But clearly the court in
11 Miranda imposed no such requirement to distinguish
12 between the procedural safeguards triggered by a
13 request to remain silent and a request for an
14 attorney, and directed that the interrogation must
15 cease until an attorney is present only if the
16 individual states that he wants an attorney."

17 So I think Mr. Gallegos was in control of
18 the situation. And he decided to say he didn't want
19 to make statements. Then he decided to continue
20 talking. He then said he didn't want to make
21 statements. Then he decided to continue talking. So
22 I do think that it was not an unequivocal invocation
23 of his right to remain silent. And ultimately, when
24 he did invoke his right to an attorney, it was
25 scrupulously honored by the two police officers.

1 So I'll give it some further thought, but
2 I'm inclined to deny the motion to suppress.

3 All right. The next motion is what is Tab
4 24, which is Troup and Billy Garcia's motion for
5 production of co-conspirators' statements and for
6 pretrial hearing on their admissibility. Shall we
7 take that motion up at this time, Mr. Cooper?

8 MR. COOPER: Judge, I think what we would
9 like to do is call Leonard Lujan. He has some -- we
10 have some testimony directed at that motion, and
11 other testimony directed at our motion to dismiss.
12 He's being held downstairs. I think the marshals
13 would like to get him out of town. So I'd like to
14 call --

15 THE COURT: What is his situation with his
16 attorney?

17 MR. COOPER: His attorney is in the
18 building -- just walked out of the courtroom, Judge.

19 THE COURT: Okay. And remind me who his
20 attorney is.

21 MR. COOPER: Dean Clark.

22 THE COURT: Okay.

23 MR. COOPER: And I will walk out in the
24 hallway and get him.

25 THE COURT: You may.

1 MR. LAHANN: Your Honor, Mr. Patterson
2 needs to use the restroom. Is that okay?

3 THE COURT: Yeah, run and do it before we
4 get started with this witness. This is kind of the
5 second time you've done this. Let's take care of
6 business before we --

7 THE DEFENDANT: It's not intentional.

8 THE COURT: All right. Well, it's the
9 second time. Let's take care of business before we
10 get in here, okay? We don't have time to take breaks
11 with this many people.

12 MR. BECK: And, Your Honor, I understand
13 that the James motion is closed, so why are we
14 hearing Mr. Lujan's testimony?

15 MR. COOPER: Your Honor, it's for the
16 motion that you just called up, and also for the
17 motion to dismiss. With regard to the motion to
18 dismiss, Judge, we're exploring the timing of his
19 cooperation relative to the federal government's
20 initiation of their investigation in the 2001
21 murders. We think his testimony has a great deal of
22 relevance as to when -- the Government got
23 involved -- when he got involved with the Government.
24 And we want to see how far back he will say that his
25 cooperation first began. And I think the relevance

1 to that motion to dismiss, certainly, and also to the
2 other motion.

3 THE COURT: All right. Is that sufficient,
4 Mr. Beck?

5 MR. BECK: Sure. If we're going to go into
6 his cooperation, that's fine.

7 MR. COOPER: And, Your Honor, if I may, I'm
8 going to start earlier than his cooperation. Because
9 I need to -- I don't know when he started, when he
10 first cooperated. So I'd like some leeway to begin
11 with what I think may be the start of his thinking
12 about cooperating, and any action to cooperate.

13 MR. BECK: I don't mind him starting with
14 those questions, Your Honor. I think we should
15 also -- while we have Mr. Lujan and his counsel here,
16 there has been a subpoena for his mental health
17 records, which I have -- I filed a motion to quash on
18 Corrections' behalf. And I just haven't gotten a
19 response from his counsel. So I think it's important
20 to take that up first.

21 MR. COOPER: I agree. I'd like to. I have
22 been dealing with Doug Couleur, a lawyer for one of
23 the other individuals who is affected by that motion,
24 and I believe we've agreed to operate, basically, as
25 we had -- as the Court had and the Government had in

1 the Eric Duran matter. And so we're going to submit,
2 we believe later on, a motion -- or an order
3 basically tracking what the Court had done in Eric
4 Duran.

5 THE COURT: Yeah, if you're ready, we need
6 to bring him on in.

7 Mr. Benjamin, did you get Mr. Clark?

8 MR. BENJAMIN: I will go get him, Your
9 Honor.

10 THE COURT: Mr. Clark, there is a chair
11 right over here. If you want to come up here and sit
12 up here. Or if you want to sit back there, it's your
13 call. Whatever you'd like to do.

14 MR. CLARK: Thank you, Your Honor. I
15 apologize to the Court and counsel. I have another
16 docket, and I wasn't aware that we'd be starting this
17 early.

18 THE COURT: Okay. Are you okay --

19 MR. CLARK: Yes, Your Honor.

20 THE COURT: -- to get started? There is a
21 chair back there. If you want to, wherever you want
22 to sit. Do you want to pull it up next to -- here in
23 front of the marshal?

24 MR. CLARK: I would, Judge. Thank you.

25 THE COURT: All right. Mr. Lujan, are you

1 able to stand?

2 THE DEFENDANT: Yeah, I can stand.

3 THE COURT: Why don't you stand up and
4 raise your right hand to the best of your ability.
5 Ms. Bevel, my courtroom deputy, will swear you in.

6 LEONARD LUJAN,
7 after having been first duly sworn under oath,
8 was questioned and testified as follows:

9 DIRECT EXAMINATION

10 THE CLERK: Please be seated.

11 THE COURT: All right. Mr. Lujan. Mr.
12 Cooper.

13 MR. COOPER: Thank you, Your Honor.

14 BY MR. COOPER:

15 Q. Mr. Lujan, on July the 5th, 1998, you were
16 at --

17 MR. BECK: Your Honor, should we take up
18 the issue with the mental health records, again, like
19 we said we were going to, before we get into this?

20 THE COURT: All right. What raised the
21 issue?

22 MR. BECK: So Mr. Garcia's counsel
23 subpoenaed New Mexico Corrections Department. But
24 they failed to comply with the HIPAA regulations for
25 a subpoena of the mental health records under HIPAA.

1 So what we need is we need either Mr. Lujan's counsel
2 to agree to provide the records with Mr. Lujan's
3 consent, or we need a court order and a process for
4 keeping them confidential.

5 THE COURT: All right.

6 MR. BECK: Since Mr. Lujan's counsel is
7 here --

8 THE COURT: Where are the records? If
9 they've been subpoenaed, where are they physically
10 right now?

11 MR. COOPER: Your Honor, they've denied our
12 request for -- they're refusing --

13 THE COURT: So they're still at the
14 Corrections Department?

15 MR. COOPER: -- refusing to submit those
16 records to us. And what we propose to do is have a
17 court order. The same thing happened with regard to
18 Eric Duran's mental health records. And in that case
19 an order was directed to the Department of
20 Corrections to produce it.

21 If I may approach Mr. Clark and show him
22 the proposed order that we're speaking of?

23 THE COURT: All right.

24 MR. BECK: Your Honor, it sounds like this
25 isn't going to be resolved quickly. So my

1 anticipation is that we're probably going to have to
2 bring this before the Court later on. So I guess the
3 best way to proceed now, since the marshals would
4 like to -- well, I don't see that Mr. Lujan shouldn't
5 be here when we talk about the dispute over his
6 mental health records, so --

7 MR. COOPER: Let's do it now.

8 MR. BECK: That's fine. I agree.

9 MR. COOPER: I think he has to be here.

10 MR. BECK: I agree.

11 MR. COOPER: So, Judge, what we would like
12 for the Department of Corrections to do is receive an
13 order from this Court directing them to produce to
14 the United States the mental health records of Mr.
15 Lujan, Eugene Martinez, and Lawrence Torres. I have
16 been in contact with Doug Couleur with regard to his
17 mental health records. He has suggested that --

18 THE COURT: And he represents who?

19 MR. COOPER: And he represents Eugene
20 Martinez. And he suggested to me that we do it the
21 way it had been done in Eric Duran's case. I said,
22 "Sounds good, we will agree to a protective order.
23 We will not disclose any of these records to anybody.
24 We will prepare the order, submit it to the
25 Department of Corrections, give them five days to

1 produce the documents, send them to the Government.
2 The Government then will have five days to have
3 counsel redact, if necessary, anything that they deem
4 needs redaction. And then, within five days of
5 receipt, the Government would then disclose to
6 counsel."

7 And we have prepared, like I say, that
8 order. I don't know whether or not Lawrence Torres
9 has a lawyer. I don't believe -- I don't know if he
10 does. But in any case, we would ask for those as
11 well. Mr. Clark, I think, has a position with regard
12 to these records. And I'll let him speak to those.
13 But that's what we would like.

14 THE COURT: And what's your position on
15 this motion, Mr. Beck?

16 MR. BECK: I think the United States'
17 position is that we just need -- I mean, we just need
18 to make sure we comply with HIPAA. And it's pretty
19 specific as to what the qualified protective order
20 has to have. The options are: Either Mr. Lujan's
21 counsel can agree to hand them over, or that the
22 parties can agree to what's called "a qualified
23 protective order." So if the parties agree to a
24 qualified protective order -- or if the parties don't
25 agree, then the Court can order a qualified

1 protective order.

2 THE COURT: What is different between the
3 qualified protective order in the statute and what
4 Mr. Cooper has got in his hand?

5 MR. BECK: That's what I'm trying to see.
6 I just saw what Mr. Cooper has in his hand for the
7 first time, so I'm trying to compare it with what's
8 required under the statute right now. So it looks
9 like the Court's order would have to prohibit the
10 parties from using or disclosing the protected health
11 information for any purpose other than the litigation
12 or proceeding in which it's requested. And it
13 requires "return to the covered entity or destruction
14 of the protected health information including all
15 copies at the end of litigation or the proceeding."

16 THE COURT: Do you mind including those two
17 provisions in there, Mr. Cooper?

18 MR. COOPER: I have no objection to doing
19 that. It was my understanding the protective order
20 would be a separate document. This is just the order
21 directing them to produce it. The protective order
22 would be a document that all counsel would sign, that
23 would include that language and other language, and
24 it would be a document similar to the protective
25 order that we had prepared or that was prepared

1 actually by Doug Couleur and the Government when we
2 got the mental health competency records.

3 THE COURT: Well, do you have any objection
4 to me signing this order, Mr. Beck, with the
5 agreement of all counsel that we'll use the form that
6 Mr. Couleur used on Eric Duran's documents?

7 MR. BECK: Your Honor, I have an objection
8 to the five-day time period, because I don't know how
9 quickly Corrections can get the documents. Five days
10 sounds pretty quick for what I've seen from their
11 paper files.

12 THE COURT: Does yours have a five-day?

13 MR. COOPER: It has a five-day, Your Honor.
14 But we moved it from 10 days to five days because we
15 subpoenaed these records three weeks ago. Three
16 weeks ago we subpoenaed the records. The Department
17 of Corrections refused to honor this Court's order
18 that they be turned over. And when they did so, I
19 think that we're 20-some days away from trial. We
20 need these documents. These are two very important
21 witnesses against a number of the people who sit at
22 this table. And I think we need those sooner than
23 later. We needed them back when we subpoenaed them.
24 And we've got some serious problems with a lot of the
25 subpoenas that went out. People are not responding

1 accordingly. They're either refusing to obey the
2 subpoenas, or sending it to the Government and not
3 sending to us as we had directed them to do so, or
4 the subpoena directed them to do so. But that's
5 another issue.

6 But, in any case, we subpoenaed these
7 records 15 days ago. We would like to have those
8 within five days of receipt of the order. I think
9 the Department of Corrections -- who by the way is an
10 arm of the prosecution. They ought to produce this
11 stuff. I think there is --

12 THE COURT: Well, let's see how it goes.
13 Why don't I put "five days," and see if that lights a
14 fire under them. If they can't do it in five days,
15 we can kind of reconvene and see where we are on
16 that.

17 All right. Any other issues then, Mr.
18 Beck, from the Government's standpoint?

19 MR. BECK: No, Your Honor. And -- I mean,
20 I think that's fine. As I said, I don't know if that
21 can happen. And so my concern is that Corrections
22 would be in violation of a court order. I think what
23 would be a more prudent approach is to put 10 days,
24 which I think will be a stretch. They haven't been
25 dragging their feet. They've been looking for them

1 since they got the subpoena. Because I told them
2 that I thought the Court would approach it this way.
3 They've been looking for them. And if they get them
4 sooner than that, they're going to provide them to
5 us. And I'm not going to drag my feet because I have
6 a 10-day order rather than a five-day order. I just
7 don't want Corrections to be in violation of a court
8 order if they can't get that paperwork soon enough.
9 So I think it could be 10 days with my
10 representation, my understanding that as soon as we
11 get them, we will get them over to Mr. Clark so he
12 can take a look, and then we will get them in the
13 hands of the defendants.

14 So I think for all practical purposes it
15 will be the same timing. The only difference is that
16 if they can't get it together, then they wouldn't be
17 in violation of a court order for five days. But I
18 understand the Court's position. That's just my
19 request.

20 THE COURT: Okay. Mr. Cooper, why don't
21 you go first, then I'll hear from Mr. Solis.

22 MR. COOPER: Thank you, Judge.

23 Judge, there is five days for Department of
24 Corrections to produce it to the Government, and then
25 five days for the Government to produce it to us.

1 And I think that's plenty of time for both entities
2 to get things done, and get it to us so that we can
3 use it and be prepared for this trial.

4 THE COURT: All right. Mr. Solis.

5 MR. SOLIS: May I be heard, Your Honor?

6 THE COURT: You may.

7 MR. SOLIS: Thank you, Your Honor. This
8 dovetails nicely into the motion I was going to argue
9 yesterday, Document 1908. What it seeks is,
10 essentially, the order the Court is getting ready to
11 sign where the Court is ready to order the release of
12 the medical records of Eugene Martinez, Leonard
13 Lujan, and Lawrence Torres.

14 In review of the conference evaluation
15 reports for Mr. Martinez, I don't think even the
16 Government would dispute there is significant Brady
17 material there. So any backup to that evaluator's
18 assessment is probably ripe with additional Brady
19 material. So given that we're fast approaching
20 trial, I would concur and support Mr. Fuller's
21 request for a five-day turnaround, Your Honor. But
22 since the Court has ordered that, I think that would
23 moot the hearing of 1908 with regard to my
24 presentation on that, Your Honor.

25 That's all I had, sir.

1 THE COURT: All right. Thank you, Mr.
2 Solis.

3 All right. Mr. Clark, are you comfortable
4 with what's being set up here?

5 MR. CLARK: Well, Your Honor, I'll take it,
6 if I have to. But one point, Judge, I'd like to
7 bring up -- good morning, Your Honor, Dean Clark on
8 behalf of Leonard Lujan -- is that once we get the
9 documents and we fashion a protective order, I'd ask
10 that included in that protective order be a provision
11 that under no circumstances do these documents make
12 it to the tablet. Counsel can carry hard copies in,
13 review them with his client, and take them home at
14 the end of the day, Judge. That is our main concern.

15 THE COURT: What did the protective order
16 on Eric Duran say?

17 MR. COOPER: Your Honor, I just spoke with
18 Ms. Gilbert, and she advised me that the documents
19 were not loaded onto the tablet.

20 THE COURT: All right. So everybody in
21 agreement that they won't be put on the tablets? All
22 right. So we can include that in the order. And so
23 that will -- not in Eric Duran's, we'll include them.

24 All right. If you'll present that order to
25 me, I'll sign this. And if there is problems next

1 week, Mr. Beck, you can get hold of me and we'll see
2 what the situation is.

3 MR. BECK: Sure. I do want to note we'll
4 work on our end to get some protective order in
5 place, but that order to produce still doesn't
6 comply, without the qualified protective order in
7 place, with HIPAA. And so Corrections still can't
8 provide us -- still cannot provide us the records
9 without the qualified protective order in place.

10 So that's why I was asking for those other
11 two provisions. I think we can add those two
12 provisions to that order that you're signing now,
13 along with Mr. Clark's request they not be placed on
14 the tablet, and that at least we can get things
15 moving to the extent that Corrections has --

16 THE COURT: Why don't I just put at the
17 bottom here, "Conditioned on entry of a protective
18 order."

19 MR. BECK: Yes, Your Honor. As I said,
20 we'll --

21 THE COURT: Then 2, "Documents will not be
22 put on tablet." Any problem with me adding that, Mr.
23 Cooper?

24 MR. COOPER: No, Your Honor. Thank you.

25 THE COURT: Is that all right putting it on

1 the entry of the production order? Does that work
2 for you, Mr. Clark?

3 MR. CLARK: Yes, Your Honor, that's fine.

4 THE COURT: Okay. All right. So I'll hand
5 this to Ms. Bevel. Do you want her to go ahead and
6 file it?

7 Do you have something else, Mr. Beck?

8 MR. BECK: I don't, Your Honor.

9 MR. COOPER: It is, Your Honor. Thank you.

10 THE COURT: All right. Mr. Cooper.

11 MR. COOPER: Thank you, Judge.

12 BY MR. COOPER:

13 Q. So Mr. Lujan, on July 5, 1998, you were at
14 Bernalillo County Detention Center; correct?

15 A. Yes, sir.

16 Q. And on that day --

17 THE COURT: Why don't you do this, Mr.
18 Lujan: Can you pull your seat up? We're going to
19 pull the microphone as close to your mouth as
20 possible.

21 THE WITNESS: Is that fine? How's that?

22 THE COURT: That sounds better. Thank you,
23 Mr. Lujan.

24 THE WITNESS: Thank you.

25 Q. And on that day you killed Felix Animal

1 Martinez; correct?

2 A. Yes, sir.

3 Q. And the way you came about to get to that
4 point is prior to that you and Freddie Munoz had been
5 out at Milan; correct?

6 A. Yes, sir.

7 Q. And while you were out there, you talked
8 with Angel Munoz; correct?

9 A. Yes, sir.

10 Q. And Angel is not related to Frederico, is
11 he?

12 A. No, sir.

13 Q. Okay. And Angel at the time was the jefe,
14 he was the head of SNM, wasn't he?

15 A. Yes, sir.

16 Q. He was the heavy, heavy; he's the big dog,
17 no?

18 A. Yes, sir.

19 Q. And he told you and Freddie to go back and
20 hit Animal, right?

21 A. Yes, sir.

22 Q. And so you went back eventually to BCDC --
23 that's the old jail that was down on like 4th and
24 Roma?

25 A. Yes, sir.

1 Q. So while you were there, you and Freddie
2 and a guy named Manuel Benito talked about how you
3 were going to hit Animal; correct?

4 A. Yes, sir.

5 MR. BECK: Objection, Your Honor. I don't
6 see how this is getting into his cooperation or the
7 James statements. And the James statements aren't
8 part of this, so I don't see how this is getting into
9 his cooperation.

10 MR. COOPER: Your Honor, I believe that it
11 is, because it sets the stage as to what he was
12 looking at in terms of the need to cooperate. And
13 what he was looking at -- this was prior to the time
14 that he was involved in the 2001 murders. I'm trying
15 to develop and show the Court that he had a motive
16 and a reason to cooperate with the investigation of
17 the 2001 murder. If he had committed this murder,
18 which subjected him at that time to a life sentence,
19 then he would have a real motive to try to work to
20 cooperate with the Government once he learned about
21 the 2001 murders.

22 And I believe that it's relevant to show
23 that -- or for me to develop our theory of the
24 case -- and we're entitled to do that -- that he was
25 in a position to cooperate at a very early point in

1 time. There is a statement that was given soon after
2 the 2001 murders, where we believe that he started
3 his cooperation. And I think this kind of sets the
4 stage.

5 So I'd ask for some leeway to set this up,
6 and give the Court the proper context to make a
7 decision as to what he did to cooperate, how he got
8 to the point of cooperation, and when that
9 cooperation occurred, particularly as it relates to
10 the investigation. We're going to have other
11 witnesses who are going to come to court and testify
12 as to when the investigation by the feds began. And
13 I think this dovetails into some of their testimony.

14 MR. BECK: Your Honor, I think that the
15 question here is when Mr. Lujan was signed up as a
16 cooperator, and what he said, and what we don't have
17 anymore. The reason that he became a cooperator
18 really doesn't matter for this motion. This is just
19 a fishing expedition to get testimony that they can
20 use at trial.

21 THE COURT: He's leading him to get the
22 answers, so is not too much fishing. Let me give Mr.
23 Cooper a little leeway. I'm not quite tracking where
24 the defendant is going. So let me give them some
25 leeway, so they can try to explain what their point

1 is. Overruled.

2 MR. COOPER: Thank you, Judge.

3 Q. So you committed this murder of Animal, and
4 by doing so, you gained some status in the eyes of
5 Angel -- or of Munoz, right?

6 A. Yes, sir.

7 Q. And do you remember what you were in
8 custody for in 1998, in July of 1998?

9 A. I believe it was residential burglaries and
10 some auto burglaries.

11 Q. Okay. So in July of 1998, you're at BCDC.
12 In the summer of 2007, when you meet Rich Lewis and
13 you make your first statement with regard to the 2001
14 murders -- there is a period of, what, nine years?
15 What happened -- what was going on in your life
16 between July of 1998 and the time that you first
17 talked with Rich Lewis in the summer of 2007? Were
18 you in and out of custody?

19 A. Yes, sir.

20 Q. And on what sorts of matters?

21 A. Pretty much the same: Residential
22 burglaries, and stuff like that, you know.

23 Q. Okay. Are you from Albuquerque?

24 A. Yes, sir.

25 Q. And what street gang were you involved?

1 A. Happy Valley.

2 Q. Do you remember the first time that you got
3 to the Department of Corrections?

4 A. I believe it was 1987, when I first got to
5 the Penitentiary of New Mexico.

6 Q. Okay. And did you first go -- you went to
7 RDC first?

8 A. I went to RDC in Grants prior to that, and
9 then I went to the main facility in Santa Fe.

10 Q. Okay. And at some point you became a
11 member of the SNM?

12 A. I didn't become an SNM member till 1993.

13 Q. Okay. So in 2001, you were a member of
14 SNM?

15 A. Yes, sir.

16 Q. And today, you're cooperating with the
17 Government; correct?

18 A. Yes, sir.

19 Q. In 2001, you were a leader, you basically
20 were taking over Southern New Mexico Correctional
21 Facility, weren't you?

22 A. Well, I wouldn't say I was a leader.

23 Q. You weren't?

24 A. I wouldn't that, you know. I was
25 somebody's right-hand man, but I wasn't no leader,

1 you know.

2 Q. So did you ever become a captain?

3 A. No.

4 Q. No? Are you sure?

5 A. Um-hum.

6 Q. Did you ever tell anybody you became a
7 captain?

8 A. No.

9 Q. Okay. You're just a soldier?

10 A. Pretty much.

11 Q. The whole time?

12 A. Pretty much. And then I became somebody
13 else's right-hand man. And then from there, other
14 people thought that I had power, you know. And, you
15 know, whatever they thought, that was on them.

16 Q. You became somebody else's right-hand man.
17 Who was that?

18 A. Billy Garcia.

19 Q. Okay. And before that, you were somebody's
20 right-hand man; who was that?

21 A. I wasn't nobody's right-hand man prior to
22 that.

23 Q. Oh, okay. Being a member of SNM, you know
24 the rules, don't you?

25 MR. BECK: Objection, Your Honor. I

1 thought we were going to get into when he cooperated,
2 and now we're getting into a lot of background
3 information that's not relevant to this motion.

4 MR. COOPER: The next question, Your Honor,
5 if I may, is when he -- what those rules are, and
6 then when he violated those rules. The main rule for
7 SNM members is: "You don't snitch." And that goes
8 to the meat of this testimony, his cooperation.

9 THE COURT: All right. Overruled.

10 Q. So the rules, the reglas, the main one is
11 you don't snitch, right?

12 A. Yes, sir.

13 Q. You're not supposed to be a rat?

14 A. Yes, sir.

15 Q. Bad stuff happens if you snitch, right?

16 A. Yes, sir.

17 Q. You get subject to being killed?

18 A. Yes, sir.

19 Q. You're aware of a lot of instances where
20 rats have been killed, not only by SNM, but by people
21 in prison, right?

22 A. Yes, sir.

23 Q. It's not just a rule of SNM, but it's a
24 rule of prison culture that you don't snitch?

25 A. Yes, sir.

1 Q. You violated that rule, didn't you?

2 A. Yeah.

3 Q. I want you to think back over the years.

4 All of the time that you were in custody, from 1993,
5 when you became a member of SNM, when was the first
6 time that you violated that rule?

7 A. It was 2007.

8 Q. So when you talk to STG and give them
9 information on something that's going on, whatever it
10 is in prison, that violates the rule, doesn't it?

11 A. Um-hum.

12 Q. When you talk to the cops, would you -- did
13 you answer that?

14 A. Yes, sir.

15 Q. Okay. Because the court reporter has a
16 hard time writing down nods. Okay?

17 So when you talk to the cops out on the
18 street, whether it's APD or BCSO or FBI, that
19 violates the rules, right?

20 A. Yes, sir.

21 Q. Anytime you talk to the STIU -- even if
22 it's not STIU, it's a CO, that violates the rules,
23 doesn't it?

24 A. Yes, sir.

25 Q. So you never talked to STIU? STG?

1 A. Not that I can recall.

2 Q. Okay. So in March of 2001, Mr. Lujan,
3 Frank Castillo and Rolando Garza were killed at the
4 Southern New Mexico Correctional Facility; correct?

5 A. Yes, sir.

6 Q. And after that set of murders, the facility
7 got locked down?

8 A. Yes, sir.

9 Q. And some people got shipped out. Others
10 got put into Seg, where they remained a long time,
11 right?

12 A. Yes, sir.

13 Q. You didn't get shipped out, did you?

14 A. No, sir. I didn't get shipped out till, I
15 think, six months later. I ended up getting shipped
16 to Virginia, to Wallens Ridge.

17 Q. Do you know why you got shipped out?

18 A. Apparently, they said that me and Charles
19 Saeda (phonetic) and Dale Chavez were going to take
20 Captain Armenta hostage, or something like that, and
21 ended up shipping to us Wallens Ridge. They shipped
22 us to the North facility first. And we were there
23 for like about four months.

24 Q. Then they shipped you out?

25 A. Yes, sir.

1 Q. And right after the murders, you didn't get
2 put in Seg or anything like that, did you?

3 A. Like about three days after.

4 Q. But that's just everybody, right?

5 A. No.

6 Q. Just you?

7 A. They locked down 16 of us first, 16 of us
8 SNMers.

9 Q. And within three days you got out?

10 A. No. They locked us down in -- I think it
11 was J2 Red. And we stayed there, I was there for
12 maybe six months before I got shipped to the North
13 facility, and then to Wallens Ridge.

14 Q. And in the days and weeks and months right
15 after the murder, you talked to Tafoya and others
16 from STG, didn't you?

17 A. Not that I can recall. I talked to -- I
18 know there was -- one of the STG, they pulled me out.
19 One of them offered me some Copenhagen, and I sat
20 there and I did some Copenhagen. But he was asking
21 me questions. And I didn't answer anything he asked
22 me.

23 Q. What did he ask you?

24 A. Hum?

25 Q. What did he ask you?

1 A. Just asking me questions about the murder
2 and stuff. And I didn't answer none of the
3 questions. And he showed me some pictures of Frank
4 Castillo and Looney.

5 Q. And he told you that they had a camera that
6 showed you talking to Billy Garcia, right?

7 A. Yes, sir. I think, yes, sir. I think
8 that's what he had told me.

9 Q. And did he show you the video of that?

10 A. No, sir.

11 Q. You didn't see it?

12 A. No, sir. No, I didn't see no video of me
13 and Billy talking. He just told me they had us on
14 camera talking.

15 Q. And did you believe him?

16 A. At the time I did believe him, because at
17 the time they were up there -- all the STG was always
18 on the roof taking pictures of all of us on camera
19 and stuff, following us with their cameras on the
20 roofs, you know.

21 Q. Do you know if it was video or just --

22 A. They had us on video. They would always
23 stand up on the roofs taking videos of all SNM
24 members of what we were doing and stuff in the yards.

25 Q. And you saw them?

1 A. Yeah. Oh, yeah. Plenty of us have saw
2 them. There was like 70, 80 of us on the yard there,
3 and all of us knew about it and all of us would see
4 them.

5 Q. So in 2001, you didn't cooperate with STG?

6 A. No, sir.

7 Q. Didn't answer any of their questions?

8 A. No, sir.

9 Q. Because to do so would be a rat?

10 A. Yes, sir.

11 Q. And you never ever --

12 A. No, sir.

13 Q. -- talked to COs or STG?

14 A. No, sir. Just that one time that we're
15 talking about now.

16 Q. And it was only one time that they came to
17 you?

18 A. Yes, sir.

19 Q. What did they ask you?

20 A. That I can recall, it was just that time.

21 Q. Okay. What were they asking you?

22 A. Just simple questions about what happened
23 with Looney, and this and that; what happened, what
24 went down, you know, like that.

25 Q. What did you tell them?

1 A. I told them I got nothing to say.

2 Q. Did you ever talk with Trent Pedersen?

3 A. Not that I'm aware of. I don't even
4 remember that name.

5 Q. Okay. He was an FBI agent that was
6 investigating these murders way back when.

7 A. Not really. To tell you the truth, I don't
8 remember him.

9 Q. Do you remember Daniel Howington?

10 A. No, sir.

11 Q. An FBI agent?

12 A. No, sir.

13 Q. How about Jennifer Sparks?

14 A. No, sir.

15 Q. Jennifer was an FBI agent.

16 A. I never talked to -- not one female back in
17 them days.

18 Q. So on August 8th of 2007, you gave a
19 statement to a detective in Albuquerque by the name
20 of Rich Lewis, right?

21 A. If I recall, the first statement I gave
22 about anything was to the head of the STG over there
23 in MDC, Matt Candelaria. He's the first one I talked
24 to.

25 Q. So tell me about that. You talked to Matt.

1 How did you -- did you know Matt?

2 A. Yeah, I went to high school with him.

3 Q. Okay. And he was a captain there at the
4 time?

5 A. Yes, sir.

6 Q. Where did you go to high school?

7 A. Rio Grande, Rio Grande High School.

8 Q. Were you guys in the same grade?

9 A. Yes, sir.

10 Q. So Captain Candelaria doesn't make the
11 rounds and go through BCDC, and into each of the
12 various pods, does he -- or at that time?

13 A. At that time? At that time, he always made
14 his rounds.

15 Q. Okay. What about -- there was a CO by the
16 name of Ellis. Do you remember --

17 A. Yes, sir, Jason Ellis.

18 Q. -- Jason Ellis? Did you talk to him about
19 it as well?

20 A. Yes, sir, he was there. He was there when
21 I talked with Matt Candelaria.

22 Q. Okay.

23 A. He was present.

24 Q. Did Jason run your pod?

25 A. As far as I remember, I think so. I think

1 it was Jason that ran the pod. And then below him
2 was Gallardo -- I don't remember Officer Gallardo's
3 first name.

4 Q. And back in that time, the guys would sit
5 in -- the pod had two doors where you could come in
6 and out, little sally port doors, and right in the
7 middle was a big glass control room. And the COs
8 would generally sit in there, right?

9 A. No. Over there in Seg 3 at MDC, in Seg
10 4 --

11 Q. No, we're not at -- oh, we are at MDC. I'm
12 sorry, you're right, you're right. Forget that.

13 A. In Seg 3 and Seg 4, it's just a sliding
14 door that opens, and then another sliding door that
15 let's you in. And it's one top row, one bottom row.
16 I'd say there is about maybe 20 cells on the bottom
17 and top. And then there is two top -- bottom and top
18 row that has like six or seven guys in them.

19 Q. Okay. I'm sorry, I was thinking about
20 BCDC. I'm an old guy, you know?

21 A. No, that's okay.

22 Q. But anyway, so this conversation in 2007 --
23 BCDC had long since closed -- we're at MDC, and the
24 Seg unit that you were in is as you described it;
25 correct?

1 A. Yes, sir.

2 Q. So you first talked for CO Ellis and said,
3 Hey, I want to talk with -- I want -- I have some
4 information, right?

5 A. No, I didn't say that.

6 Q. No?

7 A. No.

8 Q. What did you say?

9 A. I told -- I wasn't feeling too good at the
10 time. I was feeling real sick and everything, and --

11 Q. How long had you been in the facility?

12 A. I'd say I'd already been maybe in a couple
13 of months.

14 Q. You were still feeling sick? From what?

15 A. I had a lot of medical conditions with my
16 stomach, you know, and I was vomiting a lot and
17 everything. And at that time Billy Garcia had
18 already went to Seg 4, and I went to Seg 3.

19 Q. Why did Billy go to Seg 4?

20 A. Apparently, they sent me a kite telling me
21 that he had PC'd from Seg 3 to Seg 4.

22 Q. And who was at Seg 3?

23 A. I was in --

24 Q. What SNM members were in Seg 3? There was
25 Gerald?

1 A. Gerald Archuleta.

2 Q. Freddie Munoz?

3 A. No.

4 Q. Freddie wasn't there?

5 A. No, Freddie Munoz wasn't there.

6 MR. BECK: Objection, Your Honor. I don't
7 see the relevance of who was there to when he
8 cooperated and what information he provided.

9 MR. COOPER: Your Honor, I believe that it
10 helps set the stage. I'll move on.

11 THE COURT: Let's take our break. If
12 you're going to move on, let's take our break. We'll
13 be in recess for about 15 minutes.

14 (The Court stood in recess.)

15 THE COURT: All right. I think we've got
16 an attorney for every defendant. Look around, make
17 sure.

18 MS. HARBOUR-VALDEZ: Your Honor, I think
19 Mr. Benjamin is on a conference call with Cari Waters
20 right now. She just called back, so Mr. Gallegos
21 does not have an attorney.

22 THE COURT: Okay. We'll hold just a second
23 then. I'm sorry, Mr. Gallegos, I looked over there
24 and didn't see that empty chair next to you. So I
25 apologize.

1 MR. BENJAMIN: I apologize.

2 THE COURT: They told me where you were.
3 Don't worry about it. All right. I think everybody
4 is back in ready to go.

5 Mr. Lujan, I'll remind you that you're
6 still under oath.

7 Mr. Cooper, if you wish to continue your
8 direct examination of Mr. Lujan, you may do so at
9 this time.

10 MR. COOPER: Thank you, Your Honor.

11 THE COURT: Mr. Cooper.

12 BY MR. COOPER:

13 Q. So you gave the recorded statement to Rich
14 Lewis on August 8, 2007, right?

15 A. I think so.

16 Q. And that was at district court. He was
17 there with Troy Davis, the Assistant District
18 Attorney; Gary -- or, no, Jeff?

19 A. I don't know.

20 Q. Some investigator?

21 A. Yes.

22 Q. You remember that meeting, right?

23 A. Yes, sir, I remember that.

24 Q. Okay. I want to take you back a little
25 ways from that meeting. And a moment ago you said

1 that you had a meeting with Matt Candelaria. You
2 talked to him, did an interview with he and -- is it
3 Jason?

4 A. It was Jason Ellis.

5 Q. Jason Ellis. Do you remember the date of
6 that meeting?

7 A. I don't recall the exact date, but I
8 remember he was the first one, because we were in his
9 office. And at that time that's when I was getting
10 real sick, throwing up and everything, vomiting.

11 And if I recall, I had gotten out of the
12 county jail, and I was out for, I think, 17 days, or
13 something like that, and went back. And when I went
14 back, there was already -- because me and Billy
15 Garcia, we were trying to do a power move against
16 Gerald Archuleta, and whoever was standing with him.
17 And when I came back into the county jail, they put
18 me in Seg 4. And I guess Billy Garcia was sitting
19 there. He was doing time in Seg 3 at the time. And
20 all of a sudden Billy Garcia comes into Seg 4. But
21 they don't put him on the tiers where they usually
22 put the SNMers, together on the top small tier or
23 bottom tier, they put him on the long tier where they
24 have all the guys that are from different
25 organizations that have PC'd and stuff.

1 And about five, 10 minutes after, I get a
2 kite, which is a letter saying that he PC'd from Seg
3 3. And everybody that was with us there at the time,
4 I told them, "Don't treat him any different or
5 nothing till we know exactly what's going on," you
6 know. And we treated Billy the same till we found
7 out what was going on and stuff.

8 But at that time I had already approached
9 Jason Ellis a few times asking him to move me to Seg
10 3.

11 Q. Okay. So you brought up a couple of things
12 that I'd like to ask you about.

13 A. Okay.

14 Q. You got a kite saying that he was PC'd --

15 A. From Seg 3.

16 Q. -- from Seg 3?

17 A. Yes.

18 Q. And you said: Don't anybody move on --
19 don't treat him any different. Why do you say that?

20 A. Because I was Billy Garcia's right-hand
21 man. That was my -- that was who I stuck with.

22 Q. Okay. I'm sorry, I didn't make -- I need
23 to give you a better question. So is there something
24 about PCing yourself that causes problems for you?

25 A. If you PC -- that's protective custody --

1 that means that you went and you did something, or
2 you didn't want to be around somebody, or you did
3 something wrong.

4 Q. And so what happens to people who PC?

5 MR. BECK: Objection, Your Honor. I think
6 we're getting far afield of when he cooperated and
7 why he cooperated, and what he said.

8 MR. COOPER: Judge, I'm just following up
9 on what he testified to.

10 THE COURT: Well, I am having trouble
11 tracking why this is relevant. But I'm also have
12 having trouble sustaining any objections, because I
13 can't figure out where we're going. So I'm going to
14 overrule the objection. But I've got to tell you I'm
15 not tracking what we're doing here.

16 MR. COOPER: Thank you.

17 Q. So people get in trouble, and they're in
18 danger if they PC, right?

19 A. Yes, sir.

20 Q. So you got sick, you were vomiting, and you
21 had to get out of your cell, and they took you to
22 Matt Candelaria's office?

23 A. No, I told them -- they came -- they came
24 to my cell, and I told them, "I'm not feeling good,"
25 and everything. I hadn't made the decision to go

1 against the SNM. I didn't make that decision at that
2 time. What happened is I was feeling sick and
3 everything, and I told them that they needed to get
4 me to medical and everything. And while we were on
5 the way taking me to medical, that's when I told
6 them, you know what, I don't want no more of this,
7 you know, I'm ready to talk and everything, you know?

8 Q. So you didn't go to medical?

9 A. Yeah, I went to medical, and then went to
10 Matt Candelaria's office.

11 Q. And this was sometime after March the 1st,
12 2007?

13 A. This was way after March 1st. This was in
14 2007, when all this was going on with me and Billy
15 Garcia.

16 Q. Okay. On March the 1st, 2007, you were
17 taken to get -- to give DNA samples for the Animal
18 murder; correct?

19 A. I think so. Because I wasn't taken over.
20 They put me in booking, and a detective came in and
21 did that -- did the swab on me.

22 Q. Was that the same detective that you
23 eventually gave a statement to?

24 A. I believe so.

25 Q. On May 4, 2007, Frederico, who participated

1 in the Animal murder with you, he pled guilty to
2 first degree murder, right?

3 A. Yes, sir.

4 Q. And at that time there was a death penalty
5 in New Mexico, wasn't there?

6 A. Yes, sir.

7 Q. And killing an inmate would subject you to
8 the death penalty?

9 A. Yes, sir.

10 Q. So Frederico pled guilty to first degree
11 murder, and he ended up getting a life sentence for
12 that, right? And that was on May 4th. You knew that
13 they had already taken DNA from you with regard to
14 the Animal murder; correct?

15 A. Yes, sir.

16 Q. And you knew that Freddie Munoz, who had a
17 history of cooperating, was probably talking to them
18 to tell them who else participated; correct?

19 A. Yes, sir.

20 Q. And so he pled on May 4th. And you knew
21 that soon after that, if not before that, he would
22 implicate you and rat you out?

23 A. Not necessarily. What was going on at that
24 time is me and Billy Garcia -- Billy Garcia was on
25 the top tier, on that long top tier, and I would

1 still talk to him, like I've always talked to him.
2 And I kept going -- they kept taking me to court, and
3 I kept telling Billy that -- Billy Garcia -- I kept
4 telling him that, you know, that Playboy is probably
5 going to testify against me. And he kept telling me,
6 "Take it to trial, take it to trial." So when Billy
7 Garcia was telling me to "Take it to trial," I
8 started getting weary with him, with Billy Garcia,
9 why is he telling me to take it to trial, when he
10 knows the same thing that I know, that Playboy, that
11 Freddie Munoz, is probably going to talk. But Billy
12 Garcia keeps trying to push me to take it to trial,
13 and I'm thinking: What's going on here, you know?

14 So I wasn't necessarily sitting there
15 thinking that that's what was going on, that Freddie
16 Munoz was going to testify against me. I just had
17 that feeling, you know. That's all it was, was just
18 a feeling. I didn't know he was going to do it, you
19 know.

20 Q. Sure.

21 A. And every time I went to court, they would
22 postpone it, postpone it. I kept telling Billy
23 Garcia, I kept telling him, Hey, this is what's going
24 on. And Billy is the one that's telling me, "Take it
25 to trial."

1 And they came and offered me a plea bargain
2 for 15 years, and I took that plea bargain.

3 Q. Let me back up, though. But before they
4 offered you that plea bargain, you had already
5 talked --

6 A. Yes, sir.

7 Q. -- to Matt Candelaria, right?

8 A. Yes, sir.

9 Q. So it was after they took your DNA sample,
10 after Freddie pled guilty to first degree murder, you
11 started vomiting, you got sick, you went to medical,
12 came out of medical, said, "I've got to go see my
13 childhood friend, Matt Candelaria; take me to Matt's
14 office," right?

15 A. It wasn't -- Matt Candelaria wasn't my
16 childhood friend. We went to high school together.

17 Q. Okay. Your high school friend.

18 A. We didn't hang out together, nothing like
19 that.

20 Q. But you knew him from high school?

21 A. Yeah, I knew him.

22 Q. So a former classmate --

23 A. Yes, sir.

24 Q. -- was at the jail. So you went to talk to
25 Matt Candelaria?

1 A. Um-hum.

2 Q. And was there -- there is an STG Unit at
3 MDC; correct?

4 A. Yes, sir.

5 Q. And was an STG officer present when you
6 were talking to Matt?

7 A. Yes, sir. Matt Candelaria was the head of
8 STG at that time. And Jason Ellis was his second in
9 command.

10 Q. So you were talking not to somebody who is
11 a captain that runs the kitchen, or --

12 A. No, I was talking to the gang unit.

13 Q. You were talking to the guys, okay. And
14 when you got there, describe for me Matt's office?

15 A. Pretty much just a desk, and you know,
16 sometimes you would have canteen sitting there to --
17 because some of us from the SNM, when we'd come over
18 there to that facility, I don't know why they would
19 do it, but sometimes they would give us care
20 packages. And Billy Garcia can testify to that
21 himself. He knows, because they done it for him
22 before.

23 Q. Sure.

24 A. And they've given us shampoo, or soups, and
25 stuff like that. So he has things like that in his

1 office, he has different stuff in his office hanging,
2 you know.

3 Q. But there is a desk; he sits behind the
4 desk. There is a couple of chairs?

5 A. Yes, sir.

6 Q. Is there a big conference table?

7 A. No, sir.

8 Q. So you talked to Matt and Jason. What did
9 you tell Matt and Jason?

10 A. I just -- I told Matt right away, I told
11 him, "You know what, I'm done with this, man. I'm
12 tired. I'm ready to just talk, dude. I'm ready, you
13 know, I'm ready to testify against anybody," you
14 know. I told him, "I'm tired of this bullshit."

15 Q. Did you tell him what sort of information
16 that you had?

17 A. Yeah.

18 Q. Did he tape record that?

19 A. No, I don't think he did.

20 Q. You didn't see a tape recorder on the desk?

21 A. No, not that I can remember, no. Not that
22 I can recall. I didn't see a recorder.

23 Q. Okay. And how long did that conversation
24 last?

25 A. It lasted quite a while. It lasted quite a

1 while. And they took me back, and they put me in Seg
2 4.

3 Q. Okay. Before we go back to Seg 4, let's
4 talk about what it was that you guys talked about
5 that took quite a while. So you told him: I'm tired
6 (speaks Spanish), I'm done with this. Let me tell
7 you, let me -- help me get out of this position,
8 right?

9 A. Yes, sir.

10 Q. So he was the first one that you said you
11 wanted out?

12 A. Yes, sir, him and Jason Ellis.

13 Q. Him and Jason?

14 A. Jason.

15 Q. If you took long time, you talked about a
16 lot of things.

17 A. Yeah.

18 Q. What was the first thing you talked about?
19 Was it the Animal murder?

20 A. No, it wasn't even that, that we talked
21 about. The first thing we talked about was the stuff
22 that was going on with me and Billy and Gerald, and
23 all that power move and all that. I started talking
24 about that, and giving up about -- talking about that
25 stuff and telling him what was going on there and

1 stuff, and you know.

2 Q. And that power move had been going on for a
3 long time, que no?

4 A. Um-hum.

5 Q. It had been going on since back when you
6 were even at Southern?

7 A. Yeah, it had been going on for a while.

8 Q. For -- was it before 2000?

9 A. Yes.

10 Q. Billy never liked Gerald, right?

11 A. No.

12 Q. No.

13 A. No. Him and Julian Romero, Billy and
14 Julian, and you know, they just didn't see eye to
15 eye. And, you know, there was conflict there always.

16 Q. Billy and Julian didn't see eye to eye with
17 Gerald?

18 A. Yeah.

19 Q. But Billy and Julian did see eye to eye?

20 A. Billy Garcia and Julian Romero -- Billy
21 Garcia and Julian Romero were real, real good
22 friends.

23 Q. They were more brothers than you and --

24 A. Yes, sir.

25 Q. -- all of the carnals, right?

1 A. Yes, sir.

2 Q. So Billy and Julian were really tight?

3 A. Yes, sir.

4 Q. So you're talking to Matt about how tight
5 Julian and Billy are, how they don't get along with
6 Gerald.

7 A. No. I didn't tell him anything about
8 Julian, just about what me and Billy were doing, what
9 was going on with me and Billy, and the stuff with --
10 I don't know if it was Max or -- Billy Garcia's
11 nephew's name was -- because Billy Garcia's nephew
12 was supposed to go and hit Gerald Archuleta. And he
13 was following Gerald Archuleta, and they met up over
14 there at that methadone clinic. And apparently,
15 Billy Garcia's nephew pulled out a gun on Gerald.
16 And Gerald grabbed the gun and shot Billy's nephew,
17 you know, that's what we were talking about. I was
18 talking about that struggle and all that.

19 Q. Did Billy's nephew ever tell you about how
20 that happened, about that incident?

21 A. I already knew.

22 Q. Did Gerald ever tell you about that
23 incident?

24 A. No.

25 Q. You heard it just on the street?

1 A. Yeah, I already knew what had went down.

2 Q. And how did you know what had went down?

3 A. Word-of-mouth.

4 Q. Word-of-mouth?

5 A. Yeah.

6 Q. From somebody else?

7 A. Yeah.

8 Q. So you told Matt and Jason about that sort
9 of stuff. What else?

10 A. I told them about that that happened, and
11 all that. And then I was telling them about how Styx
12 and Arturo, how they had all put a hit on me because
13 I didn't send Styx money and stuff. So they wanted
14 to kill me because I didn't send them money, and this
15 and that. And I told him about all that and
16 everything. And then I told them about -- let me
17 see, let me make sure -- yeah, that's what we were
18 talking about. I told them about that hit and
19 everything.

20 And then I told them about the
21 consideration that me and Gerald had through the
22 vents, where we were talking about Popeye. And I
23 told -- and that's Anthony Apodaca -- and I told them
24 that me and Gerald had -- me and Gerald sat there,
25 and I asked Gerald why he went and did that to

1 Popeye, why he hit Popeye, ordered the hit on Popeye,
2 and everything. And he tried to deny it and this and
3 that. And I told him, "Ese, you know what, Gerald,
4 you already know, ese, if I can get you, I'm going to
5 get you, you know."

6 And he told me the same thing, "If I can
7 get you, I'm going to get you." Because I was the
8 only one besides -- because see, the ones that were
9 with Billy Garcia in the county jail -- see, at that
10 time, all of us -- see, we thought that everybody was
11 with us.

12 MR. BECK: Objection to the narrative.

13 THE COURT: All right. Do a little Q and
14 A.

15 MR. COOPER: I will, Judge.

16 Q. So you were in the county jail, and in the
17 pod that you're speaking of, Billy was by himself?

18 A. No, Billy was already in Seg 4.

19 Q. Okay. And who else was in Seg 3?

20 A. I was there by myself.

21 MR. BECK: Objection, Your Honor,
22 relevance.

23 THE COURT: What's the relevance?

24 MR. COOPER: Your Honor, he was trying to
25 tell his story and I'm allowing him to do so.

1 THE COURT: Well, why don't you be more in
2 control. Why don't you try to get to points that I
3 need to hear to decide this motion.

4 MR. COOPER: Thank you, Judge.

5 Q. So at the time -- so what else did you talk
6 to Matt Candelaria about?

7 A. That, and just about a few other things,
8 you know, just a few things about --

9 Q. Give me the first thing you talked to him
10 about, or the next thing talked to him?

11 A. It was about the power struggle me and
12 Billy were doing, just that kind of stuff and
13 everything. But I didn't get into any detail about
14 of the SNM or anything of that until me and Troy
15 Davis -- I had that conversation with Troy Davis and
16 everything, with my attorney there.

17 Q. Okay. So during this conversation with
18 Matt and Jason, it was mostly about SNM politics?

19 A. Yeah.

20 Q. So it wasn't about specific incidents
21 that -- you talked a little bit about what happened
22 with Popeye. But for the most part, it was other
23 stuff. You didn't talk about the 2001 murders or the
24 Freddie Sanchez or anything later?

25 A. No. If I recall, if I remember, if I

1 recall, I brought up about Animal, I brought about
2 that murder with me with me and Playboy.

3 Q. I would think that you would, because --

4 A. If I recall, me and him talked about that.
5 You know, I brought that up.

6 Q. That was on your mind heavy at that time,
7 wasn't it?

8 A. Oh, yeah, but I had been expecting it. All
9 that whole -- all the whole time that I wasn't
10 comfortable, the whole nine years that we got away
11 with it, I wasn't comfortable, because I always knew
12 something was going to happen.

13 Q. Eventually?

14 A. You know, I always knew.

15 Q. So you talked a little bit about Animal.
16 Anything else?

17 A. No, just pretty much all that.

18 Q. And do you think this conversation lasted
19 two hours? Three hours?

20 A. I would say about a good hour and a half.

21 Q. An hour and a half, okay.

22 A. A good hour and a half, couple hours.

23 Q. Have you ever seen a statement that either
24 Matt or Jason prepared concerning what you said?

25 A. No, sir. No, sir, but part of my plea

1 bargain at that time -- part of my plea bargain at
2 that time, when I signed it for the 15 years, part of
3 the agreement on the plea bargain was for them to
4 transport me within a couple of days. And Jason
5 and -- if I remember, it was Jason and -- no, it
6 wasn't Jason. It was Matt Candelaria and the other
7 Candelaria that was part of the gang unit at that
8 time, too, because it was a younger Candelaria -- I
9 don't remember his first name. He was part of the
10 gang unit. They're the ones that transported me
11 right away to RDC there in Los Lunas, you know, and
12 they transported me right away. And that was the
13 last time I seen him, heard of him, anything.

14 Q. After the plea or after sentencing?

15 A. After sentencing.

16 Q. So you met with Candelaria and Jason for
17 about an hour and a half, with Matt Candelaria and
18 Jason, for an hour and a half. At some point they
19 called Rich Lewis, didn't they?

20 A. Yeah.

21 Q. And Rich came and talked to you on July 25.
22 Do you remember that?

23 A. No, I think -- I think after I talked with
24 Matt and Jason, I think the other -- the conversation
25 I had after that was the one that I had in the

1 courtroom, with Troy Prichard and all of us sitting
2 in there. I think that was the first time that --
3 other than the first conversation with Jason and
4 them. Because in the other -- when I talked with
5 Troy Prichard, when I talked with him, Jason Ellis
6 and Matt Candelaria were in there also.

7 Q. So you don't remember having a conversation
8 with Rich Lewis sometime prior to that conversation
9 at district court?

10 A. No. All I remember is the detective coming
11 to hit me with the charges of premeditated capital
12 murder on Animal. And they swabbed me. And after
13 that, I started going to courts and everything. And
14 then I went in -- I went in there. We went into, I
15 think it was Judge Murdock's room, where he has his
16 court and stuff, we went into a room, and we sat at a
17 table, and that's where we --

18 Q. Big table, like a jury room?

19 A. Yes, sir.

20 Q. Okay. And you know that interview with
21 Rich Lewis was tape-recorded, wasn't it?

22 A. Yes, sir.

23 Q. And Rich Lewis was there, Troy Davis was
24 there, his investigator was there, you were there,
25 right?

1 A. Yes, sir.

2 Q. I don't think that your lawyer was there
3 that time. I think he showed up -- and your lawyer
4 was Troy Prichard?

5 A. Yes, sir.

6 Q. I think he showed up the middle of the next
7 day.

8 A. Yeah, he showed up -- I think he showed up
9 right when one was already going.

10 Q. Almost done?

11 A. Yeah.

12 Q. So do you remember very early in the
13 interview on August 8, 2007, where Rich Lewis is
14 introducing everybody that's in the room in that jury
15 room, in Judge Murdock's courtroom, and he says: The
16 district attorney is right here, his investigator is
17 here, and the police department investigator is here.

18 You said, "Okay."

19 And then he said, "Um, I know last time you
20 talked about federal involvement and going into the
21 witness security program." Do you remember saying
22 that?

23 A. Yes, sir. I -- at the time, I told them
24 that I wanted to go into the witness protection
25 program. And I wanted to make sure that my

1 girlfriend at the time was going to be safe, and --
2 because she was pregnant.

3 Q. But when I read this, it appears to me that
4 you had talked to Rich Lewis previously.

5 MR. COOPER: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 Q. Let me know, Mr. Lujan, when you finish
9 reading it. And I really direct your attention to
10 the part that's underlined in yellow.

11 A. I don't recall this conversation right
12 here. Because at the time I think -- I think I was
13 pretty, you know, nervous and everything, with what
14 was going on at the time. But I don't recall this
15 conversation here. And I've never spoke of -- I
16 don't remember ever speaking of ATF. Why would I
17 speak of ATF?

18 MR. COOPER: May I approach, Your Honor?

19 THE COURT: You may.

20 A. I don't recall that conversation.

21 Q. So when it says, "I've already talked to an
22 ATF agent," that's Rich Lewis saying that; he's
23 telling you he talked to an ATF agent; correct?

24 A. Yes. And I don't remember that.

25 Q. Okay. I guess my point, Mr. Lujan, is that

1 it appears to me, when I read this, that Rich Lewis
2 says, "I know last time you talked about federal
3 involvement. You wanted some help. You wanted to
4 stay safe and secure. You wanted to get into the
5 witness protection program." And you must have
6 talked to Rich Lewis about that, because during this
7 conversation on August 8, he tells you: "The last
8 time we talked, Mr. Lujan, about the witness
9 protection program. I've already looked into it for
10 you. In fact, I've talked to an ATF agent."

11 And at the next interview he brings Gary
12 Ainsworth, an FBI agent, to that interview, right?

13 MR. BECK: Objection, compound, your Honor,
14 I'm not sure which questions he's asking Mr. Lujan.

15 THE COURT: Well, see what he does with it.
16 Overruled.

17 Q. He's a smart guy. He can deal with it.

18 A. At the time -- see, at the time when all
19 this first started and everything, I have never
20 been -- done anything like this or anything, you
21 know? And I had never asked for witness protection,
22 nothing like that before, nothing. And, you know, I
23 was kind of nervous, kind of freaking out, you know.
24 But, you know, that's one thing I always told him is
25 "I want to be protected. I want to be protected."

1 And that was my main thing. I didn't ask for
2 anything else. I asked them to -- for protection.

3 Q. And let me tell you what I'm asking. What
4 I'm asking is, if you remember a conversation with
5 Richard Lewis, the APD detective that you talked to
6 for a long time -- two times that were recorded --
7 I'm asking if you remember having a conversation with
8 him prior to the time that you were in the conference
9 room of Judge Murdock's courtroom?

10 A. No. I don't remember that conversation.

11 Q. Okay. You don't think Rich Lewis ever went
12 out to MDC to talk to you?

13 A. If you have it there, then he probably did.
14 But I don't remember it.

15 Q. Okay. So in this August 8 interview that
16 you gave Rich Lewis --

17 A. Okay.

18 Q. -- you think that was the first time you
19 ever spoke with Detective Lewis?

20 A. I remember -- the only times I remember
21 having any conversations, I remember having that one
22 with Matt Candelaria, and then I remember going to
23 the courtroom and having that one.

24 Q. Okay.

25 A. If I remember correctly, I think there was

1 a detective that did come and talk to me prior to me
2 going to the courtroom, you know. I think. I know
3 it's been a while, but, you know --

4 Q. And where did that conversation occur?

5 A. I don't know. I can't tell you because I'm
6 trying remember it.

7 Q. But you think there was a conversation with
8 the detective?

9 A. There was.

10 Q. Do you think it happened at MDC?

11 A. No, I didn't have no conversations with
12 nobody at MDC.

13 Q. So if you had one, it had to have been at
14 APD, or in the courthouse?

15 A. The only time I ever had a conversation at
16 APD headquarters, or anything like that, was when
17 they did the investigation for Animal. Other than
18 that, I've never been in the APD building before.

19 Q. Okay. So in that August 8 statement you
20 describe what occurred in the Animal murder, and you
21 describe what happened in the 2001 murders, right?

22 A. Yes, sir.

23 Q. And you talk about having had conversations
24 with Billy down at Southern before those murders?

25 A. Yes, sir.

1 Q. Was anybody else present when you had those
2 conversations?

3 A. No. Me and Billy talked about a lot of
4 different stuff when he got there to Southern.

5 Q. And nobody else was present?

6 A. Yeah, there was other people present, you
7 know. But not for the stuff that meant anything, you
8 know, for all the other stuff that we talked about,
9 just -- excuse my language -- bullshit that we talked
10 about, was just, you know, that. But when it was
11 serious stuff to talk about, it was just me and
12 Billy.

13 Q. So after the August 8, 2007 interview, you
14 met at the district attorney's office, mid afternoon
15 on September 12, and at that time you were
16 interviewed by Norman Rhoades, New Mexico State
17 Police Officer; Felipe Gonzalez, New Mexico State
18 Police Officer; Detective Rich Lewis; Troy Davis was
19 there; Gary Ainsworth was there; and then,
20 eventually, Troy Prichard shows up. Do you remember
21 that?

22 A. Yes, sir. Yeah, I remember that one.

23 Q. And that was at the DA's Office?

24 A. Yes, sir.

25 Q. And that was recorded?

1 A. Yes, sir.

2 Q. And that happened on September 12, right?

3 A. Yes, sir.

4 Q. On September 13 -- well, was the entire
5 discussion with them tape-recorded, do you know?

6 A. As far as I know, as soon as we started
7 talking, they recorded. I think there was some times
8 that they shut it off, but it wasn't while we were
9 talking.

10 Q. Did they ever threaten you to tell you that
11 if you didn't do what you needed to do, you'd be
12 facing the death penalty?

13 A. No, sir.

14 Q. Or facing a life sentence?

15 A. No, sir.

16 Q. So the next day, an information charging
17 you with second degree murder was charged in your
18 case, right?

19 A. Yes, sir.

20 Q. And the day after that there was an amended
21 information charging you with first degree murder,
22 right?

23 A. Yes, sir.

24 Q. And five days after that you pled guilty to
25 second degree murder with a firearm enhancement, and

1 that subjected you to 16 years -- 15 years?

2 A. Excuse me, but I don't know what a firearm
3 enhancement -- I never even had one of those charges.

4 Q. Oh, you're right, it wouldn't have been --
5 I think it was on the document, but it couldn't have
6 been, right?

7 A. Yeah, because I've never been arrested for
8 a firearm.

9 Q. Because what you pled to, there wasn't a
10 gun?

11 A. There wasn't a gun.

12 Q. Okay. So you pled to a 15-year exposure?

13 A. Yes, sir, with -- I pled with a 15-year
14 cap, to get 50/50 good time on it, and to be
15 transported to RDC right away.

16 Q. Okay. So for that murder and for your
17 cooperation, you basically got 7 and a half years on
18 that murder?

19 A. Yes, sir.

20 Q. So in the September 12, 2007 interview that
21 you did at the DA's Office the day before the
22 information was filed, a few days before you
23 ultimately pled guilty to the offense, you told them,
24 the investigators, that Tafoya and them from STG said
25 that: They had me and Billy on camera talking to

1 each other, right?

2 A. Yes, sir.

3 Q. And you say that you didn't talk to them,
4 and you didn't tell STG --

5 A. No, sir.

6 Q. -- at Southern, anything about those
7 murders?

8 A. No, sir.

9 Q. You eventually -- once you're sentenced on
10 the Animal murder, you go to RDC, which at that time
11 was at Los Lunas?

12 A. Yes, sir.

13 Q. And eventually to PNM?

14 A. Yeah, I go to PNM North.

15 Q. Go to North.

16 At some point in time, you begin to start
17 talking to the feds, right?

18 A. Yes, sir.

19 Q. Tell me the first time that you talked to
20 them.

21 A. They came -- the first time they came
22 was -- I started getting real, real sick, and got
23 sent out to St. Vincent's and all that stuff, and I
24 was real, real sick with a bowel obstruction and
25 everything. I broke a TV and cut my legs, and they

1 sent me to MHTC, the Mental Health Treatment Center
2 there in Los Lunas. And I remember, there is where I
3 had one of the conversations. And prior to that, I
4 had a conversation at PNM, I think one time, if I
5 recall. I'm not sure.

6 Q. And what year would that have been?

7 A. I got to PNM in early 2008, or late 2007.
8 So it had to have been around 2008.

9 Q. And so who did you talk to?

10 A. I forget his name.

11 Q. He was an FBI agent?

12 A. Yeah, he was an FBI agent.

13 Q. It was before Bryan Acee got into the case?

14 A. Yeah. It was way before Bryan got into the
15 case. But he came and he talked to me, I think once
16 or twice there. And just the one time -- you know, I
17 never asked him for anything, nothing. They never
18 promised me anything or nothing. And I just -- I was
19 doing real bad. I didn't have nothing. So I went
20 and I asked them if they could help me out with \$500,
21 you know. And I explained to them why.

22 And that's what I used that money for is, I
23 bought me a TV. I bought me some clothes that I
24 needed, stuff like that, you know. And that's the
25 only time I've ever asked anybody for help or

1 anything. Nobody has ever promised me nothing,
2 nothing like that.

3 Q. So that happened in 2008, that the FBI gave
4 you \$500?

5 A. Yes, sir.

6 Q. And you bought a TV?

7 A. Somewhere around there. Because prior --
8 because right after that -- right after that is when
9 I was at MHTC -- it's kind of fuzzy -- it's a
10 little -- MHTC, the Mental Health Treatment Center in
11 Los Lunas, it's a little fuzzy, because at that time
12 I was real sick. Not with my mind, but sick from
13 illnesses in my stomach. I had a minor bowel
14 obstruction at that time. And I had H. pylori, and I
15 threw a TV at the door and cut my legs, and they sent
16 me over there to St. Vincent's. And at St.
17 Vincent's, from there, they transported me straight
18 to Mental Health Treatment Center in Los Lunas. And
19 I wasn't even there, I think 24 hours, and they had
20 to send me back out because St. Vincent's botched the
21 surgery. And they sent me to UNMH.

22 Q. Okay. Let me stop you there for a minute.
23 I appreciate you wanting to give me a lot of
24 information.

25 A. No, I'm --

1 Q. Okay. So the agent that went to see you,
2 the FBI agent, do you remember if it was Lance
3 Roundy? Does that name sound familiar?

4 A. I think -- you know what, I think that is
5 who it was. I think that was his name.

6 Q. And you think he gave you \$500 and talked
7 to you?

8 A. He didn't give me --

9 Q. No, no, he didn't give it like that, but
10 they put it on your books?

11 A. Like I explained a while ago, I never asked
12 them for nothing. They never promised me nothing
13 like that. I was doing real bad and I didn't have
14 nothing. I said, Well, you know what, I'm going to
15 ask them and see if they'll help me, you know. And I
16 did. I asked if they'd help me, you know?

17 Q. Good.

18 And during the -- from that time until
19 2015, you continued to cooperate to some degree with
20 various agencies; if they ever talked to you about
21 something, you'd talk to them, right?

22 A. It was always the FBI.

23 Q. It was always the FBI?

24 A. The FBI agent, always an FBI agent.

25 Q. And how often during that period of time

1 would you talk to them?

2 A. I talked to -- I talked to an FBI agent, I
3 think three times. And then, while I was at MHTC --

4 Q. Okay. Three times before you went to MHTC?

5 A. Two or three times before I went to MHTC.
6 And when I got to MHTC, I wasn't doing too good. I
7 was real sick. I was doing the hepatitis C treatment
8 and everything. I told -- I told the head
9 psychiatrist over there -- now I'm getting stuck -- I
10 told the head psychiatrist there to not let -- I told
11 him, Captain Rodriguez --

12 MR. BECK: Objection, nonresponsive, Your
13 Honor.

14 Q. Did you tell them not to give you any more
15 visitors?

16 A. Yes, sir. I asked them -- I didn't want to
17 speak to nobody, nobody at all. And they still came
18 and talked to me.

19 THE COURT: Did the court reporter hear my
20 ruling? I said "Overruled."

21 Q. So how long were you at MHTC?

22 A. Anywhere between, I'd say six, seven years,
23 six, seven years, somewhere around there. But they
24 would move me back and forth from MHTC to APA.

25 Q. What's APA?

1 A. It's for guys that have anger issues, that
2 can't manage -- that have problems, you know.

3 Q. And where is that located?

4 A. Right now, it's at the North facility in
5 PNM.

6 Q. Okay, at the time --

7 A. At the time it was at Los Lunas.

8 Q. It was at Los Lunas?

9 A. Yes, sir.

10 Q. So you'd go from one unit at Los Lunas to
11 another?

12 A. Yes, sir. The Mental Health Treatment
13 Center is completely separate from APA, you know?
14 The Mental Health Treatment Center is -- it's like a
15 hospital. You know, it's like a hospital. But APA
16 is completely different. It's like a management
17 unit.

18 Q. Okay. And that's separate than the RDC
19 units?

20 A. Yes, sir.

21 Q. And when you were at APA, did the agents
22 continue to come talk to you?

23 A. Not while I was in APA. I never talked to
24 nobody while I was in APA. They came one time with
25 my attorney, and by then, I had already talked to Dr.

1 Horowitz. That's where I got stuck a minute ago.
2 That was the head psychiatrist at the time, Dr.
3 Horowitz. I had asked him, Captain Rodriguez, and
4 Tim Norman, the unit manager, not to let nobody come
5 and pull me out or nothing, because I wasn't doing
6 too good.

7 Q. Okay.

8 A. At that time, I wasn't doing good at all.
9 I was real, real sick.

10 Q. So at some point of time your lawyer
11 brought an FBI agent to talk with you there?

12 A. Yes, them and the district attorney came
13 and talked to me. And the district attorney had a
14 laptop computer with him. And --

15 Q. Was it the same district attorney who you
16 met in Judge Murdock's jury room?

17 A. No, sir.

18 Q. Troy Davis?

19 A. No, sir. This was a district attorney out
20 of over here, out of the Dona Ana.

21 Q. Was it a U.S. Attorney?

22 A. I believe so. I'm not sure. I'm not too
23 sure.

24 Q. But it was a prosecutor?

25 A. Yeah, like I said, I was pretty sick at

1 that time, you know. I was pretty sick. But I
2 understood what we were talking about, what was going
3 on and stuff.

4 Q. And what sorts of things did you guys talk
5 about during that visit?

6 A. I gave them a full and complete statement
7 of everything.

8 Q. Of everything?

9 A. Of everything from -- when the time I
10 became an SNM member, to --

11 Q. To the time you're in --

12 A. -- to the time I walked away.

13 Q. To include what happened in 2001, to
14 Rolando --

15 A. Yes, sir.

16 Q. -- and Pancho?

17 A. Yes, sir.

18 Q. Okay. And during that meeting at MHTC, the
19 attorney, the prosecutor, had a laptop, and was --

20 A. Yeah.

21 Q. -- was continually typing away?

22 A. Yes, sir.

23 Q. Have you ever seen the statement, if any
24 was generated, from that interview?

25 A. I've seen, like, two or three different

1 statements. But they're pretty coherent with -- they
2 follow each other, and they all pretty much say the
3 same thing. There is like two or three statements
4 that I've given. And each one of those statements
5 don't falter from the other one, that I'm aware of
6 anyway.

7 Q. So two of the statements would be the
8 statements that you gave to Rich Lewis, right --

9 A. Yes, sir.

10 Q. -- two of those three. Have you seen
11 others?

12 A. No, sir. Just the ones that -- I think the
13 only thing -- the only statements I've seen and that
14 I'm aware of is the ones from court that I did in the
15 courts with Mr. Davis, with Troy Davis, and then the
16 one at MHTC. I remember speaking with the FBI
17 agents. I don't know, I don't remember if there was
18 a recorder, or what, there with us. And I remember
19 just what me and my attorney have talked about.

20 Q. Okay.

21 A. But I remember the statements I've given,
22 and every statement I've given has not faltered from
23 the other, that I'm aware of.

24 Q. Okay. I don't remember if I asked you
25 whether at that September 12, 2007 meeting, if Gary

1 Ainsworth, the ATF agent, was there?

2 A. I don't even know who that was.

3 Q. Tall, kind of cowboy-looking guy, wearing
4 cowboy boots, probably --

5 A. I can't recall.

6 Q. But there were a lot of people; there was
7 Rich Lewis, Norman Rhoades --

8 A. Yes, a lot of people.

9 Q. -- Felipe Gonzalez, Troy Davis?

10 A. There was a lot of people. But I can't
11 remember all of their names, you know.

12 Q. So you got indicted in this case with all
13 these guys and a bunch of others, right?

14 A. Yes, sir.

15 Q. And that indictment happened in December of
16 2015; correct?

17 A. Yes, sir.

18 Q. In March of that year -- so, like nine
19 months earlier, you told the Government that you
20 didn't want to cooperate anymore, right?

21 A. No, sir. I've never -- I've never told
22 them that. I've never told them that. My attorney
23 came -- my attorney at the time, he came with a
24 paper, and had me sign it, and he told me that they
25 weren't -- that the feds weren't going to prosecute

1 me. I'm three months to the door, I'm three months
2 to parole, and this comes up.

3 Q. What are we talking about? What month?
4 When were you three months to the door?

5 A. I was going to get out in 2016. I was
6 getting ready to get out. Right before -- three
7 months after -- February of 2016, I was going to get
8 out.

9 Q. Okay.

10 A. And this came up, all this came up.

11 Q. But back in March of 2015, did you have a
12 discussion with agents, and perhaps with Jack
13 Burkhead, the United States Attorney -- Assistant
14 United States Attorney who was investigating this
15 case -- that you didn't want to cooperate anymore?

16 A. I don't remember ever telling them I didn't
17 want to cooperate. Because I've always cooperated.
18 I've always -- I've always been the same. I've never
19 faltered that I know of, you know?

20 But there is times -- you've got to
21 remember that there is times, too, where I've been
22 sick, you know, where I've had illnesses, you know,
23 and been sick and stuff, and you know, maybe
24 something went on at that time that I don't remember.
25 But, from what I can recall, and what I remember and

1 everything, I don't remember ever telling anybody
2 that I didn't want to cooperate anymore.

3 Q. Now, you said you had a letter from the
4 Government telling you that they weren't going to
5 prosecute you anymore. Tell me about that letter.

6 A. My attorney at the time -- I forget his
7 name. Excuse me, what was his name? The one right
8 before? I can't remember his name.

9 Q. The one before Mr. Clark?

10 A. Yes, sir.

11 Q. Was he appointed after you got indicted?

12 A. Yes, sir.

13 MR. BECK: Objection, Your Honor,
14 relevance. This seems like a fishing extradition for
15 discovery here.

16 MR. COOPER: Your Honor, I think it is
17 relevant, in that we're talking about when he was
18 cooperating, when he was not cooperating. I think
19 that, for our motion to dismiss, we need to show a
20 timeline, basically. And I think -- I'm asking him
21 about a letter that he says the Government sent him,
22 telling him that they weren't going to -- they
23 weren't going to prosecute.

24 I have another letter --

25 A. Excuse me --

1 THE COURT: Hold on.

2 A. -- I don't mean to interrupt --

3 THE COURT: Hold on. Let me rule on the
4 objection. Let me let him establish the timeline and
5 the attorneys involved. Overruled.

6 Q. So can you tell me, was it a lawyer that
7 was appointed for you after you were indicted?

8 A. It was Daniel Tallon.

9 Q. Dan Tallon, okay.

10 A. The attorney that represented me. And he
11 came -- I'd say like about three months prior to me
12 getting out and everything, he came, like, three
13 months prior to that, and he told me that -- he gave
14 me the letter and everything, and told me, send it
15 and everything, and he told me that they didn't want
16 to prosecute me no more. And I said, Okay, you know.
17 He said -- but he also said that they can pick it up
18 later on, you know, so I said, Okay.

19 Q. Had you already been indicted?

20 A. As far as I know, yes.

21 Q. Was he representing you to try to negotiate
22 a deal for you before you got indicted?

23 A. No, sir. He wasn't doing anything like
24 that, that I know, that I'm aware of. He was just --
25 he was representing me because they indicted me. And

1 we're trying to see what was going to go on at the
2 time, you know. And at the time he, all of a sudden,
3 just out of the blue, came and told me that, and so
4 he gave me, he showed me the paper, and everything
5 and all that. And that's when he said that they
6 weren't going to prosecute me no more. And I said,
7 okay. But then later on that they could, if they
8 wanted to. So I said, Oh, all right. You know, with
9 that understanding, I knew that later on that they
10 could come. But wasn't expecting to get hit on this
11 RICO act stuff, you know? I wasn't expecting that.

12 Q. Okay. On December 3, 2015, were you on the
13 street or were you in custody?

14 A. I was in custody. I've been in custody
15 since 2007. I haven't been on the street since.

16 Q. But you were three months to the door at
17 that time?

18 A. Yes, sir.

19 Q. Did you ever make it to the door?

20 A. No, sir.

21 Q. So you never told Jack Burkhead or Lance
22 Roundy that you were not going to cooperate anymore
23 back in March of 2015?

24 A. Not that I can recall.

25 Q. Did you have a lawyer back in March of

1 2015?

2 A. I've already had, I think, three or four
3 lawyers representing me in this case. And the only
4 ones that have really stuck with it is my attorney
5 representing me now, and then Daniel Tallon; those
6 are the only two that have stuck with me all the way.
7 The other ones are only there for a short, minimal
8 time, and they are gone.

9 Q. Did Mr. Tallon represent you on some state
10 matters before this?

11 A. No, sir. It was just federal stuff.

12 Q. Okay.

13 MR. COOPER: May I have a moment, Your
14 Honor?

15 THE COURT: You may.

16 MR. COOPER: Your Honor, I will pass the
17 witness. Thank you.

18 THE COURT: All right. Thank you, Mr.
19 Cooper.

20 Any of the other defendants? Mr. Burke?

21 CROSS-EXAMINATION

22 BY MR. BURKE:

23 Q. Mr. Lujan, I need to clarify that last
24 part. So once you decided to cooperate, you have not
25 varied from that decision?

1 A. No, sir.

2 Q. Once you made that decision, that was your
3 decision; you're going to see it through?

4 A. Yes, sir.

5 Q. And the way you recall events, you've
6 always told it exactly the same --

7 A. Yes, sir.

8 Q. -- each and every time?

9 A. Yes, sir. There might have been something
10 that didn't -- but it was pretty much the same way,
11 the same thing. You know, I might have said it a
12 different way, but it was the same thing.

13 Q. Yeah. And in this -- you've pled guilty in
14 this case then?

15 A. Yes, sir.

16 Q. And I didn't understand that part either.
17 Were you promised that you weren't going to be --
18 have you been made any promises about what the
19 sentence will be?

20 A. No, sir.

21 Q. So you could be facing a life sentence?

22 A. Yes, sir.

23 Q. And then -- and I notice -- and we haven't
24 talked about this, and we won't dwell on it -- but
25 you do have some health problems still?

1 A. Yes, sir.

2 Q. And are you hoping, then, to go to a BOP
3 facility that has good doctors and such?

4 A. Well, I've never been in the feds, so I
5 really don't know how that works. So, you know, I
6 really -- I'm hoping that I get to a medical
7 facility. But if I don't, I don't. You know, I've
8 been in the State, living with these medical issues
9 for a long time already, so, you know --

10 Q. Have there been any discussions about
11 getting to one of the BOP's good hospitals or health
12 care facilities?

13 A. The only one I've talked to about any of
14 that was my attorney.

15 Q. Yeah, and I don't want to know about that.
16 So you are going to testify at some point,
17 if you're called as a witness?

18 MR. BECK: Your Honor, objection to
19 relevance. This is certainly a fishing extradition.

20 THE COURT: This seems to me to just be
21 getting into his credibility. Is his credibility
22 important for this determination?

23 MR. BURKE: No, not really. It was my last
24 question. I'm surprised that this is the line that
25 we're going to draw.

1 THE COURT: All right. Sustained.

2 MR. BURKE: All right.

3 THE COURT: All right. Mr. Solis.

4 EXAMINATION

5 BY MR. SOLIS:

6 Q. Good morning, Mr. Lujan.

7 A. Good morning.

8 Q. I just want to follow up on some of the
9 responses you gave a little while ago. My name is
10 Eduardo Solis, Mr. Lujan.

11 So you mentioned you were interviewed by
12 Mr. Candelaria and Jason and Rich Lewis; is that
13 correct?

14 A. Yes, sir -- no, I was interviewed by Jason
15 Ellis and Matt Candelaria. And Jason was just
16 standing there. It was pretty much me talking to
17 Matt Candelaria.

18 Q. And, I'm sorry, you said Alice --

19 A. Jason Ellis.

20 Q. I'm sorry, I couldn't hear you.

21 A. Jason Ellis.

22 Q. And this was in 2007?

23 A. Yes, sir.

24 Q. And were these interviews with all three --
25 well, let me strike that and ask you: Did you

1 interview with Mr. Candelaria, and then you had a
2 subsequent interview where Jason was present, and
3 then Ellis --

4 A. When I talked to Matt about it, Jason was
5 present.

6 Q. Okay. And you said Mr. Candelaria, in
7 response to the question, you saw him taking notes?

8 A. Yeah. He was sitting there, he was taking
9 notes. I'm not -- I can't remember if he had a
10 recorder. I don't think there was a recorder. But I
11 know he was taking notes. Because that's STG's --
12 that's what they do, they take notes.

13 Q. Okay. And you said -- in response to the
14 question, you talked a lot about the politicking of
15 the SNM at that interview. Do you remember that?

16 A. Yes, sir.

17 Q. What did you discuss about the politicking
18 of the SNM?

19 A. Just about where me and Billy Garcia were
20 doing a power play, and where me and Wild Bill were
21 over there in the county jail, and while we were
22 there --

23 Q. When you talk about the politicking, Mr.
24 Lujan, did you get into how that was characterized or
25 what exactly was involved in politicking?

1 A. No. We didn't talk about something like
2 that. We never got into the characterization of
3 that. We just pretty much sat there and went with
4 what was going on, you know.

5 And Billy Garcia, he's been up there for a
6 while, and -- you know, so, you know, with me being
7 his right-hand man, and me and him were sitting there
8 and we're going against Gerald Archuleta, and Gerald
9 Archuleta was the one calling all the shots.

10 Q. Thank you, Mr. Lujan.

11 So those were your words, politicking, the
12 politics of the SNM. What did you mean by that, if
13 you didn't get into it?

14 A. The politicking is -- for one, is trying to
15 overplay the other one, you know, like a chess board
16 game.

17 Q. Like alliances; you form alliance against
18 another --

19 A. Yeah.

20 Q. -- and you try to undermine the other
21 person, or the other alliance; is that right?

22 MR. BECK: Your Honor, objection to
23 relevance. This is fishing. If we're talking about
24 what he told them, we've already heard what he told
25 them was politicking.

1 THE COURT: Well, I'll let him explore a
2 little bit. Overruled.

3 MR. SOLIS: Thank you.

4 Q. So then, the politicking is what I've
5 described, it involved that, right?

6 A. Yes, sir.

7 Q. And you understand what "undermining"
8 means, right?

9 A. Yes, sir.

10 Q. That could take various forms; is that
11 right?

12 A. Yes, sir.

13 Q. You could say things about others; some
14 true, some not true?

15 A. Yes, sir.

16 Q. And you were a member of the SNM for a good
17 while?

18 A. Yes, sir.

19 Q. And then you had a subsequent interview, I
20 think you said, with Troy -- and I'm not familiar
21 with all the names as of yet -- is "Troy" a first
22 name or a last name?

23 A. What do you mean? Troy Prichard?

24 Q. Okay. Troy Prichard. And I suspect --

25 A. That was my attorney representing me at the

1 time.

2 Q. And he was present at the interview you
3 just talked about, with Mr. Candelaria?

4 A. Yes, sir, he was present at that one.

5 Q. Okay.

6 A. That's the one, that's the interview that
7 we had in Judge Murdock's chambers.

8 Q. So in Judge Murdock's chambers is Troy
9 Davis -- or Troy Prichard, I think you said?

10 A. Troy Prichard, I think it was.

11 Q. Who else was present?

12 A. Troy Davis was the district attorney at the
13 time.

14 Q. Okay.

15 A. Or the Assistant District Attorney. And
16 Matt Candelaria was there; Jason --

17 Q. Let me interrupt you there. Matt
18 Candelaria, Troy Davis, and Troy Prichard -- two
19 Troys; is that right?

20 A. Yes.

21 Q. This is a subsequent interview from the one
22 we're talking where Matt Candelaria is present
23 initially; is that right?

24 A. Yes. I had -- there was two separate where
25 Matt Candelaria was present.

1 Q. Okay. And did you follow up on the
2 politicking of the SNM when you had that second
3 interview?

4 A. In my whole statement, pretty much is
5 everything right there, in my whole statement. In my
6 whole statement -- has been the same thing. And
7 right there, just in my statement alone, you see
8 where the politicking was. I mentioned it --

9 Q. And I'm aware of your statement, but I'm
10 wondering -- I beg your pardon for talking over you.

11 I'm aware of your statement. But was there
12 anything you talked about that's not in the
13 statement?

14 A. No.

15 Q. Okay.

16 A. No, pretty much, it's been always just what
17 I've talked about in the statement.

18 Q. Okay. So at the second interview with
19 Candelaria and Troy Davis and Troy Prichard, was what
20 was discussed there similar to what was discussed at
21 the first interview with Matt Candelaria and Jason?

22 A. Yes, sir. Every time I've had an interview
23 or talked to anybody, it's been pretty much the same.

24 Q. So the same topics?

25 A. The same topics.

1 Q. Okay. You've also discussed, you met with
2 Felipe Gonzalez, State Police Officer Felipe
3 Gonzalez. Do you remember that?

4 A. No, sir.

5 Q. Do you remember saying that a little while
6 ago?

7 A. I don't remember talking with any State
8 Police.

9 Q. Hold on a second. Give me a second.

10 MR. SOLIS: May I have a moment, Your
11 Honor?

12 THE COURT: You may.

13 Q. So you've never been asked -- a little
14 while ago you were asked if you met at the DA's
15 Office back, about September 12, where you had a
16 meeting with -- not he by himself, but Felipe
17 Gonzalez was present, State Police Officer?

18 A. I'm not sure. I don't know everybody that
19 was there.

20 Q. Okay. You mentioned the various facilities
21 you've been housed. Where were you housed in 2001?

22 A. 2001, I was housed in Southern New Mexico
23 Correctional Facility.

24 Q. How long were you there?

25 A. I'd say about a year, year-and-a-half.

1 Q. Do you remember what pod you were in?

2 A. I was in K-1, blue.

3 Q. When did your stay there begin?

4 MR. BECK: Your Honor, objection; this is
5 clearly fishing.

6 THE COURT: What does this -- how are we
7 tying this?

8 MR. SOLIS: I'm simply following up with
9 the questions that were asked of him earlier, Your
10 Honor. That's all.

11 THE COURT: I'm going to sustain this one.
12 I think this is one of the areas where I began to
13 sustain.

14 MR. SOLIS: Thank you, Your Honor. I'll
15 pass the witness.

16 THE COURT: Thank you, Mr. Solis.

17 Any of the other defendants have
18 cross-examination of Mr. Lujan?

19 MR. BENJAMIN: No, Your Honor.

20 THE COURT: All right.

21 Okay, Mr. Beck. I guess I should say yours
22 is cross-examination.

23 CROSS-EXAMINATION

24 BY MR. BECK:

25 Q. Good morning, Mr. Lujan.

1 A. Good morning.

2 Q. I'm going to start sort of towards the end,
3 because that's a little bit more fresh in my memory.

4 I think you said the first time that you
5 spoke with law enforcement, as far as you remember,
6 was 2007; is that right?

7 A. Yes, sir.

8 Q. And that was with -- I think you said --
9 STG Officers Candelaria and Ellis?

10 A. Yes, sir.

11 Q. Then, I think when Mr. Solis was asking you
12 questions, you talked about a subsequent interview
13 with Mr. Davis. Do you remember that?

14 A. I'm not sure, but I think I had -- because
15 everything was happening so fast, and I was like
16 getting, like -- I was a little confused at the time,
17 but not too confused where I don't remember the one
18 with Judge Murdock, where I talked in Judge Murdock's
19 office. But all I remember is, when the detective
20 came and swabbed me, to hit me with first degree
21 premeditated capital murder; and that's where
22 everything started on that, you know. But I don't
23 remember talking to somebody individually.

24 Q. I understand. It sounds to me like, at
25 this time, in 2007, because it was the first time you

1 were cooperating or "telling," as you might say, it
2 was a little disorienting to you; fair to say?

3 A. Yeah, it was something new to me, and I
4 was, like, you know --

5 Q. And is that because, before 2007, you were
6 a good SNM Gang member?

7 A. Yeah.

8 Q. And as a good SNM Gang member -- I think
9 Mr. Cooper started with you here on this -- you don't
10 snitch, right?

11 A. Yes, sir.

12 Q. And you said that you were Billy Garcia's
13 right-hand man, right?

14 A. Yes, sir.

15 Q. You and Billy Garcia were close?

16 A. Yes, sir.

17 Q. You guys were tight?

18 A. Yes, sir.

19 Q. Was he your big homie?

20 A. Yes, sir.

21 Q. So you just followed him, right, whatever
22 he would say?

23 A. Well, I would have done anything he asked
24 me to do.

25 Q. And he trusted you?

1 A. Yes.

2 Q. And you trusted him?

3 A. Yeah.

4 Q. So, if he told you something, he could be
5 believe it would be in confidence, as far as you
6 know?

7 A. Yeah.

8 Q. Is that why you said that if you talked
9 about anything -- I think you said "of substance" --
10 you two did it alone?

11 A. Yes, sir.

12 MR. COOPER: Your Honor. Excuse me, I
13 object to the leading nature of this. I know that
14 it's cross-examination, but it's really his witness.
15 This is not my witness.

16 THE COURT: Let's not lead.

17 MR. COOPER: Thank you.

18 Q. Is that -- did you talk to Mr. Garcia in
19 your cell about the Garza and Castillo murders?

20 A. Yes -- me and him, we didn't talk about it
21 until he arrived. And when he arrived, we talked in
22 my cell. Everybody approached him, hugging him,
23 telling him "Amor," which means love, and, you know,
24 this and that.

25 And I waited in my cell because I knew he

1 was going to come in and talk to me, you know. And
2 when he did, the first thing he told me: "What the
3 fuck is going on," excuse my language --

4 Q. Sure.

5 A. -- you know, and he told me that he had
6 sent word with Earn Dog for me to take over the
7 llaves from Lino G. And, you know --

8 Q. Let me ask you one -- is Earn Dog Ernest
9 Guerrero?

10 A. Yes, sir.

11 Q. And Lino G, does he also go by the name
12 Sexy Walker?

13 A. Yes, sir.

14 Q. When Lino G was -- I'm guessing, was he in
15 charge of Southern before Billy Garcia came?

16 A. He was running the line. And he had
17 already messed up -- him and Butch had already messed
18 up and talked, because Sleepy had already hit some
19 black dude, stuck some black guy, and he did it
20 without letting anybody know, or anything, so -- and
21 that's what Lino -- that's what Lino -- Lino went,
22 and him and Butch went and ratted and gave up to STG
23 that they didn't give him permission to do that, and
24 stuff like that, you know what I mean? And that's
25 where all that came from, you know. That's where

1 Lino G lost his power, you know.

2 Q. All right. Did Billy Garcia expect that
3 you would have been -- before he got down there,
4 after sending word with Earn Dog, did he expect you
5 would have been in charge of Southern at that time?

6 A. I'm pretty sure he would have. Because if
7 I would have got the word, I would have let people
8 know, hey, you know.

9 Q. I think you talked about this was after the
10 time you murdered Animal, right?

11 A. Yes, sir.

12 Q. And does a murder give you respect within
13 the SNM?

14 A. Yes, sir.

15 Q. At the time of the Castillo and Garza
16 murders, when Billy Garcia told you these things,
17 were you, at that time, a devoted SNM member?

18 A. Excuse me?

19 Q. In 2000, when Billy Garcia told you about
20 the Castillo and Garza murders, were you a devoted
21 SNM member at that time?

22 A. Yes, sir.

23 Q. And so was he also a devoted SNM member at
24 that time?

25 A. Yes, sir.

1 Q. Was he a leader of the SNM at that time?

2 A. Yes, sir.

3 Q. And so, given your close relationship with
4 Mr. Garcia, do you have any reason to think that he
5 would lie to you when he was telling you to murder
6 Garza and Castillo?

7 A. No, sir.

8 Q. Now, do some SNM members, such as yourself,
9 eventually go ahead and cooperate with law
10 enforcement?

11 A. There has been some. You know, there has
12 been some. And I guess through all this, there has
13 been a lot, you know.

14 Q. Sure. And so, when other SNM members tell
15 you about killings they performed for the SNM,
16 assaults they've done for the SNM, in your opinion,
17 is there a possibility that that may lead to
18 incriminate them down the road, if someone cooperates
19 with law enforcement?

20 A. I don't understand the question there.

21 Q. Sure. You said that you know, from your
22 experience, that some SNM members, like yourself,
23 cooperate with law enforcement eventually?

24 A. Yes.

25 Q. And you know -- if you know, do you know

1 that telling someone else about a murder would tend
2 to incriminate the person who is telling that?

3 A. Yeah.

4 Q. And so, knowing what you know, would
5 someone in the SNM telling you, or someone else about
6 a murder, possibly incriminate them sometime down the
7 road?

8 A. Yes, sir.

9 Q. All right. I want to go back into the
10 interviews that you had. I think you said the
11 earliest you started cooperating with any law
12 enforcement was 2007, right?

13 A. Yes, sir.

14 Q. Now, it sounds like, from your conversation
15 with Mr. Solis, after you spoke with Mr. Candelaria
16 and Mr. Ellis, it was soon after that that you gave
17 the recorded conversation with Rich Lewis, wasn't it?

18 A. Yes, sir.

19 Q. Did you talk to Rich Lewis -- and I've read
20 over that transcript -- was that a long,
21 tape-recorded conversation?

22 A. It took a long time. We were in there for
23 quite a while. And I was nervous the whole time, you
24 know?

25 Q. Sure. Did you talk in that interview

1 about -- well, let me ask you this question first --
2 I think you told Mr. Solis this -- but was
3 Mr. Candelaria also present for this recorded
4 interview?

5 A. Yes, sir.

6 Q. And did you talk in this recorded interview
7 with Mr. Lewis, Mr. Candelaria there, about
8 everything that you've talked to Mr. Candelaria and
9 Mr. Lewis about?

10 A. Yes, sir. Everything has always been the
11 same.

12 Q. At some point in this case, you debriefed
13 with Mr. Clark there and Special Agent Acee and
14 myself in the jail. Do you remember that?

15 A. Yes, sir.

16 Q. At the interview with Mr. Lewis, was there
17 any FBI agent at that interview?

18 A. If I recall, when we -- the first -- we're
19 talking about the first interview?

20 Q. Yes, sir.

21 A. I think there was, you know? I'm not sure.
22 I think there was. But the whole time, the whole
23 time I emphasized that I -- about being protected. I
24 wanted to be protected. I always talked about that
25 through the whole conversation. I kept asking them,

1 you know?

2 Q. Sure.

3 So Rich Lewis, was he -- what agency was he
4 with?

5 A. Excuse me?

6 Q. Rich Lewis, was he an APD detective, or
7 what was he?

8 A. I think he was just an APD detective.

9 Q. Okay. And I think you said Troy Davis was
10 there.

11 A. Because I remember Rich -- excuse me, I
12 remember Rich Lewis -- yeah, he was an APD officer.
13 And he said that he knew -- he knew -- he could get
14 me -- he knew people that -- he could help me to get
15 in witness protection and stuff, you know?

16 Q. Sure.

17 And then Troy Davis, was he with the
18 District Attorney's Office?

19 A. Yes, sir.

20 Q. And other than Troy Davis, Rich Lewis, and
21 Mr. Candelaria from STG, was there anyone else there
22 that you remember?

23 A. Jason Ellis was there. Because they're the
24 ones that transported me to the hearing.

25 Q. Is Jason Ellis a corrections officer?

1 A. I don't know if he's still working there.
2 As far as I know, Matt Candelaria retired, as far as
3 I know.

4 Q. Let me ask you this question: At that
5 time --

6 A. At that time, yes.

7 Q. -- he was a corrections officer?

8 A. Yes, sir.

9 Q. So other than Rich Lewis, Troy Davis, Matt
10 Candelaria, Jason Ellis, was there anyone else there?

11 A. I think -- I think, if my memory is
12 right -- I think Gallardo was there, too. He was one
13 of the STG officers there, too.

14 Q. Oakly. And as an STG officer, he's not an
15 FBI agent, right?

16 A. No.

17 Q. So going through those folks who were there
18 on August 8, 2007, does that refresh your memory as
19 to whether there was an FBI agent there?

20 A. No, it doesn't. It doesn't.

21 Q. So is it fair to say you don't remember an
22 FBI agent being there?

23 A. I don't think there was one there.

24 Q. Okay. And then, after that, you had an
25 interview on November 12 of 2007; correct? I think

1 you went over this with Mr. Cooper earlier, and with
2 Mr. Solis. Do you remember that? I think that's the
3 one you were talking about where Mr. Prichard was
4 there?

5 A. Yeah. He was -- he even showed up a little
6 late, I think.

7 Q. Right. And this was the one, I think, Mr.
8 Cooper was asking you about, that there was an ATF
9 person there? Do you remember Mr. Cooper asking you
10 about that?

11 A. Yeah. And as far as I can recall and
12 remember, I don't remember any ATF officer.

13 Q. Okay. If you looked at -- you know that
14 that conversation was recorded, right?

15 A. Um-hum.

16 Q. You know that there is a transcript that
17 came out of that?

18 A. No. I don't think I've ever seen it.

19 Q. Okay, sure. Would it refresh -- but you do
20 remember an interview with Mr. Lewis, Rich Lewis, on
21 September 12, 2007, right?

22 A. Yeah, I remember that.

23 Q. And would it refresh your memory as to who
24 else was there, if I provided you the transcript of
25 that recorded conversation?

1 A. If I read the whole thing probably a couple
2 of times, I would probably start thinking, you know.
3 My memory is good. But I have to sit there and, you
4 know, think about it for, you know, and then I'll --
5 you know, it will click in.

6 Q. Let me ask you this question: When you had
7 these interviews, would they oftentimes, when they
8 started the interview, would they record the
9 conversation?

10 A. Yeah. Most -- the majority of the time
11 that's what they would do, is they would tell me that
12 they were going to record this; if I had any problem
13 with it, and I told them "No."

14 Q. Sure. And when they recorded the
15 conversation, would they introduce themselves to you
16 as to who was in the room so that would be reflected
17 on the recording?

18 A. Yeah, they would. And a lot of times I
19 wasn't -- I was so nervous that I wasn't really
20 paying attention to a lot of who was introducing
21 themselves. You know, I was just concentrating on
22 the one that was with the recorder and asking the
23 questions.

24 Q. Sure. And so that's what I'm saying: You
25 weren't concentrating on it then, but now, if you

1 looked at who was there in the transcript, that would
2 probably help refresh your memory?

3 A. Yeah, it might jog my memory a little bit.

4 MR. BECK: May I approach, Your Honor?

5 THE COURT: You may.

6 Q. Just read over that first page, and I'll
7 ask you some questions.

8 A. Okay.

9 Q. And Mr. Lujan, just let me know when your
10 memory is refreshed. I think if you've read the
11 first page, that's --

12 A. Yeah, I read it. I can't recall an ATF
13 officer.

14 Q. Sure.

15 A. I can't recall. I don't remember that at
16 all.

17 Q. And just to make sure. Hold on a second.
18 I'll come back to that in a moment.

19 When you read over this, there was -- at
20 least present, according to this, was Norman Rhoades,
21 who was an investigator with the New Mexico State
22 Police; is that right?

23 A. See, I think he's the one that had the
24 recorder. I think he's the one that had the
25 recorder.

1 Q. Okay. And then there was Detective Rich
2 Lewis from APD, right?

3 A. Um-hum.

4 Q. Troy Davis from the District Attorney's
5 Office; is that right?

6 A. Um-hum.

7 Q. And then it says here, "Gary Ainsworth out
8 of ATF"; is that right?

9 A. Um-hum.

10 Q. And then it also says that also in the room
11 was Agent Felipe Gonzalez from the State police,
12 right?

13 A. Yes.

14 Q. And it didn't say -- there wasn't anyone
15 there from FBI, right?

16 A. No, sir.

17 Q. And there wasn't an Assistant U.S. Attorney
18 there, right?

19 A. No, sir.

20 Q. I think you said you met with -- the first
21 time you met with the FBI was sometime around 2008?

22 A. Yes, sir.

23 Q. Is that fair to say? And I think you
24 marked that in time by sort of where you were housed,
25 or where you were being transported at that time?

1 A. Yes, sir.

2 Q. And is that a way that you used to kind of
3 help you kind of think about dates?

4 A. Yes, sir. I remember the times when I got
5 sick and stuff, and that helps me remember pretty
6 much close to what dates, what was going on at that
7 time.

8 Q. And I think you said it could have been
9 2008. Could it have been January 23rd of 2009?

10 A. If I remember -- if I remember correctly --
11 because I was already at MHTC in 2009 -- and I
12 remember -- I got to remember the attorney that was
13 representing me at that time. I think it was Jason
14 Bowles that was representing me at that time. Him
15 and the district attorney from over here, from Dona
16 Ana County, and there was somebody else there I can't
17 remember. And I think a couple of the STG officers
18 from Los Lunas. And that was one of the times I
19 remember. That's the time when I told -- when I had
20 asked Dr. Horowitz not to allow nobody to pull me
21 out, because I wasn't feeling good and stuff.

22 Q. So I guess my question to you -- you
23 remember talking to -- you remember talking to an FBI
24 agent at this time; is that right?

25 A. Yes, sir. Excuse me, that's exactly who

1 was in there, was an FBI agent.

2 Q. Okay. Do you remember if Richard Lewis,
3 the APD detective, was also present?

4 A. I think there was only Mr. Bowles, the
5 district attorney; I think it was the FBI agent --
6 I'm not sure if there was somebody else there. But I
7 know that the STG -- a couple of the STG officers
8 were in there.

9 Q. Okay. Oh, this might have been sometime
10 around this -- okay, now, I'm looking -- does
11 September 17 of 2008, does that sound better than
12 January of 2009?

13 A. I remember an FBI agent coming and talking
14 to me at PNM North. And he came one time and talked
15 to me and everything, and we talked, and this and
16 that, and talked a little bit about stuff that was
17 going on, you know.

18 Q. Yeah. Was that the time that you asked to
19 be paid \$500?

20 A. I believe it was the second time he came to
21 see me.

22 Q. Okay.

23 A. I believe it was the second time he came to
24 see me. But it was the same -- same FBI agent that
25 came to see me.

1 Q. And you said -- were you paid the \$500 for
2 talking that time?

3 A. Yes, sir. They put it on my account there
4 at PNM.

5 Q. And do you know that you have to be
6 actually opened as an FBI informant to be paid by the
7 FBI for those services?

8 MR. COOPER: Objection. Lack of personal
9 knowledge.

10 THE COURT: If he knows. You might
11 establish some foundation how he knows that. But if
12 he knows, I'll allow the testimony.

13 MR. BECK: I think that's what I was doing.
14 I think his answer was yes.

15 Q. Do you know that to be paid by the FBI, you
16 have to be opened as --

17 A. I didn't know at the time.

18 Q. Do you know that now?

19 A. Yeah, I know that now.

20 THE COURT: Well, and still establish how
21 he knows it.

22 MR. BECK: I am. Sorry, Your Honor, I
23 didn't mean --

24 THE COURT: Let's do that first before we
25 get his testimony.

1 Q. And how do you know now that you have to be
2 opened as an FBI informant to be paid by the FBI?

3 MR. COOPER: Objection, hearsay.

4 THE COURT: Well, it may be. But this is
5 partly, I guess, a 104 hearing, to some degree, so
6 I'll allow it.

7 A. Would you repeat the question, please?

8 Q. Sure. How do you know now that you have to
9 be opened as an informant -- well, let me go with
10 this question first: Have you personally signed
11 receipts when you've been paid by the FBI?

12 A. Yes, sir.

13 Q. And does that indicate to you that you have
14 to be officially opened as an informant --

15 A. Yes, sir.

16 Q. -- to be paid by the FBI?

17 A. I never knew nothing about any of that,
18 never.

19 Q. And have you also been -- how else do you
20 know now that you have to be opened as an FBI --

21 A. Word-of-mouth. People have told me. You
22 know, some people have told me.

23 Q. Were you first opened as an FBI source on
24 February 4 of 2009, by Special Agent Sonya Chavez?

25 A. I never knew if he had did anything, or

1 what. But all I did was ask them for the money, and
2 they gave me that 500. I never asked them for
3 another penny. I never asked for anything ever
4 again.

5 Q. And was that around the beginning of 2009
6 or end of 2008?

7 A. Right.

8 Q. Were you closed as an FBI informant on
9 March 2 of 2011?

10 A. Yes, sir. That's when I believe that
11 Daniel Tallon came with that paper and told me that
12 they weren't going to prosecute me and stuff.

13 Q. Were you reopened on September 2 of 2011,
14 by Special Agent Lance Roundy?

15 A. I think so. Yeah, I think so.

16 Q. And then, were you closed as a Special
17 Agent -- or, excuse me, as a government informant --
18 by Lance Roundy on September 12th of 2012?

19 A. I'm not sure. I'm not sure, because I
20 don't know how any of that worked. I never worked
21 with the feds. I never been in the feds, nothing.
22 So I didn't know how any of that stuff was, you know.
23 All I know is that they would come and talk to me,
24 and this and that.

25 And that's the only time I ever asked for

1 money. And I never asked -- I never sat there and
2 asked a bunch of questions or nothing -- what goes on
3 with the feds or anything like that, or anything like
4 that, you know.

5 Q. And for this case, were you opened as an
6 informant by Special Agent Nancy Stemo on January 5th
7 of 2017, of last year?

8 A. I believe so.

9 Q. So I think you talked about the one meeting
10 in 2008, that we just talked about. You also said
11 that you remember meeting with the FBI, with your
12 attorney, Jason Bowles. Do you remember that?

13 A. Yes, sir.

14 Q. Was that February 27 of 2014?

15 A. Yes, sir, I believe so.

16 Q. And also present -- was Assistant United
17 States Attorney Jack Burkhead present at that
18 meeting?

19 A. Yes, sir.

20 Q. Mr. Lujan, have you ever testified in front
21 of a federal grand jury?

22 A. No, sir.

23 MR. BECK: May I have a moment, Your Honor?

24 THE COURT: You may.

25 MR. BECK: Nothing further, Your Honor.

1 Thank you.

2 THE COURT: Thank you, Mr. Beck.

3 Mr. Cooper. Do you want to take the lead
4 on redirect?

5 MR. COOPER: I would, Your Honor. Thank
6 you.

7 THE COURT: Mr. Cooper.

8 REDIRECT EXAMINATION

9 BY MR. COOPER:

10 Q. After Billy came down to Southern and he
11 spoke with you -- or at that time, you and he were
12 pretty tight, weren't you?

13 A. Yes, sir.

14 Q. Mr. Beck asked you a series of questions
15 about how you and he were best friends, and you were
16 tight and that sort of stuff, right?

17 A. Yes, sir.

18 Q. And you would do anything for Billy at that
19 time; correct?

20 A. Anything he would ask me, I would have
21 done.

22 Q. And he expected you to keep a confidence,
23 and you would keep those confidences, right?

24 A. Yes, sir.

25 Q. And things between you and him were between

1 you and him, and it wasn't for anybody else?

2 A. Yes, sir.

3 Q. You wouldn't tell anybody anything that
4 Billy told you?

5 A. No.

6 Q. And you said all of the interviews that
7 you've done have been recorded; correct?

8 A. Yes, sir.

9 Q. Did the FBI record your interviews?

10 A. Yes, sir. As far as I know, the FBI --
11 there was some, I think, State Police. And I had
12 quite a few interviews where they've recorded me and
13 everything. So I mean, I can't sit there and tell
14 you exactly, oh, this guy's an FBI agent; oh, this
15 guy is APD; or this guy is a state police officer. I
16 couldn't tell you that, you know. I can only sit
17 there and tell you that they introduced -- and that's
18 what I -- you know, I thought that they were -- I
19 know the ones that went to PNM and talked to me were
20 FBI agents.

21 Q. And did they have tape recorders, and did
22 they tape record those interviews with you?

23 A. I think the first -- I think the first one
24 they did, if I'm correct.

25 Q. And who was that that went the first time?

1 A. I can't recall his name. I can't recall
2 his name. And then I remember one time there was a
3 female and a male that came to see me.

4 Q. Did they tape record your interview?

5 A. If I'm -- if I remember correctly, they
6 did.

7 Q. Okay.

8 MR. COOPER: May I have one moment?

9 THE COURT: You may.

10 MR. COOPER: Your Honor, I would like to
11 mark --

12 MR. BECK: You know what, I think it would
13 be R. He's got A through Q.

14 MR. COOPER: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 BY MR. COOPER:

18 Q. Mr. Lujan, I'm handing you a document
19 that's marked Defendant's Exhibit S for
20 identification purposes.

21 MR. COOPER: Your Honor, we have previously
22 marked a number of other Exhibits A through R. So
23 this is S.

24 THE COURT: And when did we do this? When
25 did we do A through Q?

1 MR. COOPER: Well, we've already premarked
2 exhibits.

3 THE COURT: Okay. All right.

4 MR. COOPER: So this is S.

5 THE COURT: All right. Okay.

6 Q. Mr. Lujan, take a look at that first page
7 just for a minute. It's a document that I have
8 previously shown you, and the document that Mr. Beck
9 had shown you a moment ago. Do you recognize that
10 document?

11 A. I don't think I've ever seen this document
12 before.

13 Q. You have not seen the document --

14 A. No, sir.

15 Q. -- but does that document appear to be a
16 transcript of the interview that occurred in
17 September of 2007?

18 MR. BECK: Just so we're clear, Your Honor,
19 the United States doesn't object to its admission.

20 THE COURT: Do you want to move its
21 admission?

22 MR. COOPER: Your Honor, I'd move its
23 admission.

24 THE COURT: Any objection from any other
25 defendants? If not, then Defendant's Exhibit S will

1 be admitted into evidence.

2 MR. COOPER: Thank you, Your Honor. May I
3 approach?

4 THE COURT: Yes, you may.

5 A. I remember all this stuff, but I don't
6 remember the ATF officer.

7 Q. Okay.

8 A. That's it.

9 MR. COOPER: Thank you, Mr. Lujan.

10 Your Honor, one final matter. I was
11 wondering if the Government would stipulate to the
12 fact that they have not disclosed to us any discovery
13 with regard to the interview that he had with Matt
14 Candelaria and Jason Ellis prior to the August 8
15 interview that he had with Rich Lewis?

16 MR. BECK: That, I don't know. I mean, I
17 don't have any reason to disagree with that based on
18 what I'm hearing today. That doesn't sound familiar
19 to me. So I can -- I'll stipulate to that. If
20 something changes, I'll let the Court know.

21 THE COURT: Does that work for you, Mr.
22 Cooper?

23 MR. COOPER: That works for me, Judge.
24 Thank you very much. And I don't have anything else,
25 Your Honor. Thank you very much.

1 THE COURT: I think Mr. Solis is going to
2 have some, Mr. Burke is going to have some. Let's
3 take our lunch break at this time, and let's pick up
4 Mr. Lujan's redirect after lunch.

5 All right. We'll be in recess for about an
6 hour.

7 (The lunch recess was held.)

8 THE COURT: Let's go on the record. I
9 think we've got all the defendants and all the
10 attorneys.

11 All right. I think we were going to have
12 some cross-examination. Is Mr. Solis back? There he
13 is. We need to get the witness back.

14 MR. BECK: Your Honor, we might make some
15 use of this time when we have a little downtime here.

16 Mr. Cooper just moved into evidence Exhibit
17 S, which was the transcript of the September 2007
18 interview of Leonard Lujan. I was going to move in
19 the August 8 interview of Leonard Lujan, which took
20 place just before that. Primarily, the reason I
21 would move these into evidence is actually more for
22 the Document 1307 and our motion in limine, 1912,
23 statements motions. And so I was wondering, I guess,
24 whether the Court would like me to just attach them
25 here and then cross-reference them, or if we should

1 do that at a different time, when we're talking
2 about --

3 THE COURT: If they're not relevant to the
4 motions we're arguing now, I'd prefer not to have
5 them in here.

6 MR. BECK: That's all I was asking.

7 THE COURT: All right.

8 MR. CASTLE: Mr. Lujan's lawyer is not here
9 yet, but if you want to take up some time, we have
10 some business to conduct. We don't need to excuse
11 Mr. Lujan for it.

12 MR. BECK: Oh, there he is.

13 MR. CASTLE: Oh, he's here.

14 THE COURT: All right. Mr. Lujan, I'll
15 remind you that you're still under oath.

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Solis, if you wish to
18 conduct redirect of Mr. Lujan, you may do so at this
19 time.

20 MR. SOLIS: I do, Your Honor. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. SOLIS:

23 Q. Mr. Lujan, did you get something to eat?

24 A. Oh, yes, sir.

25 Q. Belly full of food now, right? Feeling

1 pretty good?

2 A. I'm okay.

3 Q. Okay. The questions I'll ask you are just
4 to follow up on what Mr. Cooper asked you earlier,
5 and I followed up a little bit on. And then Mr. Beck
6 asked you some questions, and I'm going to follow up
7 a little bit on those, okay? Do you follow me?

8 A. Yes.

9 Q. So remember we talked about, in follow-up
10 to Mr. Cooper's questions, about you talking about
11 the politicking and the politics of the SNM? Do you
12 remember that?

13 A. Yes, sir.

14 Q. And I followed up with you, and I asked
15 you: Do you remember -- or is it a fact that the
16 politicking involves trying to undermine other people
17 within the SNM? Do you remember that?

18 A. Yes, sir.

19 Q. And then you also said and agreed with me
20 that that involves making alliances and that kind of
21 thing? Do you remember that?

22 A. Yes, sir.

23 Q. And then you said the politicking also
24 involves other sorts of activities. And the question
25 I have for you is, does that involve talking about

1 others or things of that sort?

2 A. Yes, sir.

3 Q. Does that involve talking about things that
4 are true or not true or exaggerating or just making
5 up stuff sometimes?

6 A. Yes, sir.

7 Q. Okay. Now, Mr. Beck asked you about, or
8 explored with you questions about status within the
9 SNM. Do you remember that?

10 A. Yes, sir.

11 Q. And he asked you also about murder and how
12 one can achieve status committing murder; is that
13 right?

14 A. Yes, sir.

15 Q. And is it true that within the SNM there is
16 a lot of what I call jockeying for position, or
17 trying to appear at a higher tier, higher level, than
18 your other associate or other prospect for an SNM?
19 Is that also true?

20 A. Yes, sir.

21 Q. And that involves probably exaggerating
22 what your role is sometimes; isn't that right?

23 A. No, not really.

24 Q. No? So that's not part of the politicking
25 that you were talking about a little while ago?

1 A. No, just -- no, when you commit murder
2 within the SNM, you move up in rank.

3 Q. Right. And status is important, right?

4 A. You get more respect like that.

5 Q. And that's because status is important?

6 A. Yes, sir.

7 Q. And status is something everyone strives to
8 achieve, right?

9 A. Yes, sir.

10 Q. And but isn't it also true that within the
11 SNM, there is some politicking that involves people
12 taking credit for stuff they didn't do, and that's
13 not agreeable?

14 A. Sometimes people take credit for something
15 they didn't do.

16 Q. People don't like that, right?

17 A. Right.

18 Q. That would include stuff like armed robbery
19 or assault, or any number of things; isn't that true?

20 A. Yes, sir.

21 MR. SOLIS: All right. Thank you. Pass
22 the witness.

23 THE COURT: Thank you, Mr. Solis.

24 Mr. Burke, I think you were going to --

25 MR. BURKE: No, Your Honor, I have no

1 further questions.

2 THE COURT: Anybody else? All right, Mr.
3 Lujan, you may step down. Is there any reason that
4 Mr. Lujan cannot be excused from the proceedings?
5 Mr. Cooper, can he be excused?

6 MR. COOPER: Your Honor, he may be excused.

7 THE COURT: All right. Is everybody with
8 the defendants comfortable with that?

9 Mr. Beck?

10 MR. BECK: He may.

11 THE COURT: All right. So you are excused
12 from the proceedings. Thank you for your testimony.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Mr. Cooper, did you
15 have further witnesses or evidence you wanted to
16 present?

17 MR. COOPER: Yes, Your Honor. We are going
18 to call Ben Clark. And he's downstairs, and his
19 lawyer is on his way.

20 THE COURT: All right. And who is his
21 lawyer?

22 MR. COOPER: Mr. Hosford.

23 MR. BECK: If his lawyers is on his way, I
24 think we should move to Trent Pedersen. He is ready
25 to testify and willing.

1 I guess we should ask how quick Mr. Clark
2 will be here, because I know Mr. Pedersen needs to
3 leave before the end of the day.

4 MS. HARBOUR-VALDEZ: I don't know how
5 quickly the marshals can get Mr. Clark up here. But
6 Mr. Hosford just texted me: "I'm coming in."

7 THE COURT: Coming into the building?

8 MS. HARBOUR-VALDEZ: I don't know what that
9 means. I didn't ask him that.

10 THE COURT: Why don't you ask if he's
11 coming in the building.

12 MR. CASTLE: Your Honor, in the meantime,
13 we have some exhibits that are going to be entered by
14 stipulation.

15 THE COURT: Okay. Go ahead.

16 MR. CASTLE: There are Exhibits A through
17 R -- and I could describe them for the Court. These
18 are all pages that are from discovery, and at least
19 the content of them are discussed in our motion to
20 dismiss so this is relevant to the motion to dismiss.

21 The first document is Exhibit A, which is a
22 report authored by Special Agent Trent Pedersen.

23 Exhibit B is a report authored by Special
24 Agent Andrew Armijo of the FBI.

25 Exhibit C is a transcription of an

1 interview conducted by Special Agent Trent Pedersen.

2 All three of these documents are from 2001.

3 Exhibit D is an email between Steven
4 Libicer from New Mexico State Police, and Norman
5 Rhoades and Felipe Gonzalez, dated April 20, 2003,
6 and which copies Albert Venegas of the Joint Task
7 Force.

8 Exhibit E is a report authored by STG
9 Officer Cheryl Lackey.

10 Exhibit F is a report dated -- well, on or
11 about March 26, 2001, by a Robert Duncan.

12 Exhibit G is a report, an FBI 302 dated
13 April 4, 2001, from Task Force Officer Edgar Rosa.

14 Exhibit H is an April 2, 2001 report from
15 STG Coordinator Jim Moore to Warden Lawrence Tafoya.

16 Exhibit I is an April 12, 2001 report
17 concerning the death of inmate Rolando Garza from
18 Lawrence Tafoya.

19 Exhibit J is a June 4, 2004 report from
20 STIU Coordinator Dwayne Santistevan to Lawrence
21 Jaramillo.

22 Exhibit K is a June 16, 2004 report from
23 STIU Coordinator Tammy Archuleta to STIU
24 Administrator Lawrence Jaramillo.

25 Exhibit L is March 7, 2001 report from a

1 Lieutenant Juan Barela to Lawrence Tafoya.

2 Exhibit M is a report -- it's dated March
3 25, 2001, but I believe from the contents of it, it's
4 probably an inaccurate date. So the best way to say
5 it is on or after March 25, 2001 --

6 THE COURT: Go ahead and bring him in. Is
7 he there? Go ahead and bring him in. He's not
8 there?

9 Go ahead.

10 MR. CASTLE: -- from Norman Rhoades.

11 Exhibit N is an FBI 302 dated April 10,
12 2001, and the author is Task Force Officer Edgar
13 Rosa.

14 Exhibit O is a report -- actually, I'm
15 going to pass on Exhibit O for just a moment.

16 Exhibit P is a report dated September 23,
17 2013, and it is a report authored by Lance Roundy.

18 Exhibit Q is an FBI 302 dated September 15,
19 2008, and that is authored by Sonya Chavez.

20 Exhibit R is a 302 dated April 8, 2015.
21 It's a 302 and a letter dated March 26, 2015. It's a
22 combined exhibit. The 302 is authored by Lance
23 Roundy. And the letter that's attached is addressed
24 to Lance Roundy from United States Attorney Damon P.
25 Martinez. And that letter is dated March 26, 2015.

1 Exhibit T is a stipulation that has been
2 reached between the parties concerning what the
3 testimony would be for Assistant United States
4 Attorney James Braun.

5 And I'll explain what the meaning of these
6 are in my argument to the Court, so -- but these are
7 exhibits that have been admitted by agreement.

8 Your Honor, I don't know if it helps, we
9 have an index of the exhibits I could provide to the
10 Court. It's been provided to counsel. I don't
11 believe any counsel has an objection to the exhibits,
12 including the Government.

13 THE COURT: All right. But you pulled O
14 out of there?

15 MR. CASTLE: Yes. I can admit O, but it
16 really is an exhibit that actually doesn't deal with
17 the motion to dismiss. So I thought that it might be
18 better to be offered when it's relevant.

19 THE COURT: All right. Any objection from
20 any of the other defendants?

21 How about you, Mr. Beck?

22 MR. BECK: No objection, Your Honor.

23 THE COURT: All right. So Defendants'
24 Exhibits A through R, minus O, otherwise inclusive,
25 are admitted into evidence.

1 Are you Mr. Hosford?

2 MR. HOSFORD: Yes, sir.

3 THE COURT: Mr. Hosford, if you want to
4 come up and make yourself comfortable over here,
5 you're welcome to do so.

6 MR. HOSFORD: Thank you, Your Honor.

7 THE COURT: Mr. Clark --

8 MR. BECK: Your Honor, again I'd ask for
9 what Mr. Clark's testimony is relevant to and a
10 proffer of why it's relevant to whatever it's
11 relevant to.

12 THE COURT: All right. Mr. Cooper?

13 MR. COOPER: Thank you, Judge.

14 Judge, this is relevant to motion 1909.
15 That's Defendant Billy Garcia's targeted response to
16 the United States' notice for proposed James
17 statement. Mr. Clark gave a statement concerning the
18 2001 murders. It's, for my part, a fairly
19 discrete -- one set of statements involving three
20 individuals that he said may have done something with
21 regard to the 2001 murders. And this is -- my
22 examination is to find out whether or not there was
23 anything that was said with regard to Billy Garcia.

24 THE COURT: And this is not on the --

25 MR. COOPER: It's not on the motion to

1 dismiss. But we're trying to -- I think the Marshal
2 Service wanted us to get these inmates in and out of
3 here today so that they didn't have to be housed here
4 again.

5 THE COURT: But this is not -- this
6 statement that I'm going to hear is not on the
7 Government's James notice?

8 MR. COOPER: It's on our -- no, it's on our
9 targeted response to that James.

10 THE COURT: All right.

11 Mr. Clark, if you'll stand and raise your
12 right hand to the best of your ability, Ms. Bevel
13 will swear you in.

14 BENJAMIN CLARK,
15 after having been first duly sworn under oath,
16 was questioned and testified as follows:

17 DIRECT EXAMINATION

18 MR. BECK: And, Your Honor, just for the
19 record, I object just like I did yesterday, that I
20 don't think there is a basis for this hearing.

21 THE COURT: All right. But this is the
22 hearing we were discussing yesterday; correct?

23 MR. BECK: Yes. Yes, the one that I --
24 yeah, the one that I objected to.

25 THE COURT: All right. So it's a 104

1 hearing; correct, whether this evidence is going to
2 come in? Is that --

3 MR. COOPER: Yes.

4 THE COURT: All right. Mr. Clark. Mr.
5 Cooper.

6 MR. COOPER: Thank you, Your Honor.

7 BY MR. COOPER:

8 Q. Good afternoon, Mr. Clark.

9 On December 3, 2015, you made a
10 statement -- you were interviewed by Federal Bureau
11 of Investigation Special Agent George Dougherty and
12 the Dona Ana County Sheriff's Officer Lieutenant
13 Bobby Holden. Do you recall that particular
14 interview?

15 A. Somewhat.

16 Q. Okay. And on that date you talked about a
17 number of things. And the only thing that I'm going
18 to ask you about today is that you said that, "In
19 2002, Billy Garcia, a/k/a Wild Bill, was the shot
20 caller for SNM, and he ordered the double homicide at
21 Southern New Mexico Correctional Facility."

22 Now, this is a report concerning the
23 interview and the statements you gave to the FBI
24 agent and the lieutenant, and -- supposedly, that's
25 what you said. And then you said that, Angel DeLeon,

1 Eugene Martinez, from Albuquerque, and Ben Gallegos
2 from Belen did the two murders. Martinez and DeLeon
3 told you they killed one of the guys.

4 Later on, sometime much later, apparently,
5 Mr. Gallegos told you that he had killed the guy,
6 referring to either Garza or Castillo.

7 My question to you is that Billy Garcia
8 never told you about those hits, did he?

9 A. I never spoke to Billy Garcia.

10 Q. Okay. So when, in the statement it says
11 that Billy Garcia was a shot caller and he ordered
12 the homicides, that was just rumor?

13 A. Can I see that statement?

14 Q. Certainly.

15 MR. COOPER: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 A. This statement is wrong. It's wrong in the
19 context that I said.

20 MR. COOPER: Okay. May I approach?

21 THE COURT: You may.

22 Q. So the reference to Billy Garcia, that's
23 the wrong part?

24 A. There is a lot of wrong parts to it.

25 Q. Okay. With regard -- on April -- but the

1 reference to Billy Garcia is wrong, and you did not
2 say that, right?

3 A. Billy Garcia was a shot caller.

4 Q. Okay. But he never told you that he called
5 the shots with regard to those individuals, did he?

6 A. No.

7 Q. April the 12th of 2016, you gave another
8 interview. And this interview, Mr. Hosford and Mr.
9 Herrera, along with Maria Armijo, Randy Castellano,
10 and Celesia Wenton, an FBI agent, Bryan Acee, Mark
11 Myers from DOC, and New Mexico Corrections Department
12 Security Threat Intelligence Sergeant Ruben
13 Archuleta, and Officers Pablo Quesada and Arthur
14 Maldonado were also present when you were
15 interviewed; correct? Do you remember that?

16 A. Yes.

17 Q. And in that particular interview it says
18 that, "Billy Garcia went down to SNM on a mission to
19 kill Garza, Castillo, and Larry Gutierrez. The hit
20 order had come from SNM leadership, and Garcia was
21 responsible for bringing the message to Southern New
22 Mexico Correctional Facility, and ensuring that it
23 was carried out. Garcia provided the kite to Leonard
24 Lujan to have the three men killed."

25 You didn't talk to Billy Garcia about any

1 of that, did you?

2 A. No.

3 THE COURT: Let me ask this: Do we know
4 the United States is going to be offering these
5 statements? I mean, they're not going to be offered
6 under co-conspirator statements because they weren't
7 on the James notice; correct?

8 MR. BECK: Right. But we are intending to
9 offer these statements.

10 THE COURT: Okay. So my mind is thinking,
11 as I listen to them, the justification, what rule of
12 evidence?

13 MR. BECK: It would be 803(3), it would be
14 804(b)(2). And some of these statements, depending
15 on who said it, would be 801(d)(2)(A), which is
16 statements by a party opponent.

17 THE COURT: Okay.

18 BY MR. COOPER:

19 Q. So Mr. Clark, back to the first interview
20 that occurred December 3, 2015, when FBI Agent George
21 Dougherty and Dona Ana County Sheriff's Officer Bobby
22 Holden interviewed you, they said you said that
23 "Martinez and DeLeon told Clark that they killed one
24 of the guys"?

25 A. Can I talk to my attorney real quick?

1 Q. Certainly.

2 (The defendant conferred with counsel.)

3 A. Okay. I spoke to four people regarding
4 them murders.

5 Q. Okay. And who were those four people?

6 A. Eugene Martinez, Leonard Lujan, Edward
7 Troup, and Joe Gallegos.

8 Q. And when you spoke to Leonard Lujan --
9 well, let me start with Eugene Martinez first. When
10 you spoke with Eugene Martinez, he did not tell you
11 that Billy Garcia had ordered the hit, did he?

12 A. No, not that I recall.

13 Q. Okay. And likewise, when you spoke with
14 Leonard Lujan, he did not tell you that Billy Garcia
15 had anything to do with it, did he?

16 A. No, Leonard Lujan did tell me Billy Garcia
17 had something to do with it.

18 Q. Okay. And where was that conversation with
19 you and Leonard Lujan?

20 A. At the North facility.

21 Q. And when did that conversation occur?

22 A. The end of 2003, the beginning of 2004. It
23 was an ongoing conversation.

24 Q. Okay. At some point in time, you spoke
25 with Edward Troup. Did Mr. Troup -- he never told

1 you that Mr. Billy Garcia ordered the hits, did he?

2 A. No.

3 Q. So it was Eugene, Troup, and who was the
4 other person?

5 A. Joe Gallegos.

6 Q. So you spoke with Mr. Gallegos also
7 sometime later in 2003, 2004?

8 A. Somewhere around there.

9 Q. Okay. Did Mr. Joe Gallegos tell you that
10 Billy Garcia had anything to do with the hits on
11 Castillo and Garza?

12 A. Not that I recall.

13 Q. Now, you say that you and Leonard Lujan had
14 an ongoing discussion in 2003 and 2004 with regard to
15 the Castillo-Garza murders?

16 A. Yes, sir.

17 Q. And how did it come up that you were
18 talking about it all that time later?

19 A. It just came up.

20 Q. Was Leonard telling you about his
21 involvement in it?

22 A. Yes.

23 Q. Did anybody else have any discussions with
24 you other than those four?

25 A. I mean, there is plenty of discussions, but

1 not directly associated with the crime.

2 Q. Okay.

3 MR. COOPER: I don't have any further
4 questions, Your Honor. Thank you.

5 THE COURT: Thank you, Mr. Cooper.

6 Anyone else on the defense side have
7 cross-examination of Mr. Clark?

8 THE COURT: All right. Mr. Beck, do you
9 have cross-examination of Mr. Clark?

10 CROSS-EXAMINATION

11 BY MR. BECK:

12 Q. Good afternoon, Mr. Clark.

13 A. Good afternoon, Mr. Beck.

14 Q. When you had the conversation with Eugene
15 Martinez, were you cooperating with the Government at
16 that time?

17 A. No.

18 Q. When you had the conversation with Edward
19 Troup, were you cooperating with the Government at
20 that time?

21 A. No.

22 Q. When you had the conversation with Joe
23 Gallegos, were you cooperating with the Government at
24 that time?

25 A. No.

1 Q. At all these times, were you instead a
2 devoted and faithful member of the SNM?

3 A. Yes.

4 Q. I think you said the last one here was
5 Leonard Lujan; is that right?

6 A. Yes, sir.

7 Q. You said an ongoing conversation from '03
8 to '04. Were there, in fact, multiple conversations
9 from '03 to '04?

10 A. Yes, sir.

11 Q. And in those conversations, did he tell you
12 about his role in the Garza and Castillo murders?

13 A. Yes, sir.

14 Q. Did he tell you multiple times from '03 to
15 '04 that Billy Garcia called those hits?

16 A. Yes, sir.

17 MR. BECK: Nothing further, Your Honor.

18 THE COURT: Let me ask you a couple of
19 questions here. I'm trying to kind of figure out
20 what we're doing. But when you said a minute ago
21 804(b)(2) --

22 MR. BECK: Sorry, 804(b)(3).

23 THE COURT: -- you're not referring to
24 dying declarations, right?

25 MR. BECK: I think we got confused when Mr.

1 Castle was showing you the chart. It's 804(b)(3),
2 statements against penal interests.

3 THE COURT: Okay. Maybe I don't fully
4 understand the interest here, but, you know,
5 statement against interests exception, like all your
6 804 exceptions are going to require a showing of
7 unavailability. If he's a cooperator here, he's
8 available. What am I missing?

9 MR. BECK: He's available. It's the
10 declarant, Your Honor. So, for example, if we're
11 going to admit Mr. Troup's statement to him, again,
12 it doesn't sound like Mr. Troup talked about Billy
13 Garcia, for instance. But say that -- let's do a
14 hypothetical here: Say that Leonard Lujan is not
15 cooperating with the Government, if indeed, he was a
16 defendant or something like that, he would be
17 unavailable to testify.

18 So what happens is, it would be against --
19 so let's get back to Mr. Troup -- it's against Mr.
20 Troup's interests, his penal interests. It tends to
21 subject him to criminal liability to make this
22 statement to Mr. Clark. So that statement comes in
23 because Mr. Troup is unavailable to testify unless he
24 takes the stand.

25 THE COURT: Okay. All right. Thank you,

1 Mr. Beck.

2 MR. BECK: So to go a little bit further on
3 that, the fact that multiple people are telling
4 multiple other SNM members the same story --

5 MR. CASTLE: Your Honor, I would object to
6 those kind of facts being disclosed in the presence
7 of the witness.

8 MR. BECK: That's fine.

9 THE COURT: All right. I brought some of
10 this up by asking the questions. But I was trying to
11 understand fully what we're trying to do.

12 All right. Thank you, Mr. Beck.

13 MR. BECK: Nothing further.

14 THE COURT: All right. Mr. Cooper, do you
15 have redirect of Mr. Clark?

16 MR. COOPER: No, Your Honor. Thank you.

17 THE COURT: Any other defendant?

18 MR. BENJAMIN: No, Your Honor.

19 THE COURT: All right. Mr. Clark, you may
20 step down. Is there any reason Mr. Clark cannot be
21 excused from the proceedings? Mr. Cooper?

22 MR. COOPER: No, Your Honor. Thank you.

23 THE COURT: How about you, Mr. Beck?

24 MR. BECK: No, Your Honor.

25 THE COURT: All right. Any other defendant

1 have any objection? Not hearing any, Mr. Clark,
2 you're excused from the proceedings. Thank you for
3 your testimony.

4 THE WITNESS: All right. Thank you.

5 THE COURT: All right. Mr. Cooper, do you
6 have further witnesses or evidence you want to
7 present? I guess is this where you need to squeeze
8 in -- is it Mr. Pedersen?

9 MR. BECK: I think it would be good for Mr.
10 Pedersen to go next.

11 THE COURT: Okay. Any objection to that?

12 MR. COOPER: Your Honor, we would -- I
13 think that's probably a good plan.

14 THE COURT: All right. And refresh my
15 memory. Mr. Pedersen is going to testify about what
16 issue?

17 MR. CASTLE: It's going to be on the motion
18 to dismiss. He was the special agent in charge in
19 2001 -- or maybe not Special Agent in charge, but
20 Special Agent.

21 THE COURT: Mr. Pedersen, if you'll come up
22 and stand next to the witness box on my right, your
23 left. Before you're seated, my courtroom deputy, Ms.
24 Bevel, will swear you in.

25

1 TRENT PEDERSEN,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 EXAMINATION

5 THE CLERK: State your name and spell your
6 last name for the record.

7 THE WITNESS: Trent Pedersen,
8 P-E-D-E-R-S-E-N.

9 THE COURT: All right. Mr. Pedersen. Mr.
10 Castle.

11 BY MR. CASTLE:

12 Q. Mr. Pedersen, how are you employed?

13 A. I'm a Special Agent with the Federal Bureau
14 of Investigation.

15 Q. And are you stationed here in New Mexico?

16 A. I'm not. I'm in a different division in a
17 different state.

18 Q. What was your job in 2001?

19 A. In approximately January of 2001, I was
20 assigned to work on a gang task force in Albuquerque,
21 New Mexico on behalf of the FBI.

22 Q. Had you been in New Mexico for a while
23 prior to that assignment?

24 A. I started my career out of Quantico, in
25 Albuquerque, so I had been there since approximately

1 1997.

2 Q. In the time between 1997 and 2001, had you
3 become aware of a prison gang by the name -- or the
4 initials of SNM?

5 A. I believe I had heard about it in the
6 media. But I had not been involved with gang
7 investigations to that point, so I believe I'd heard
8 the name, but I was not readily familiar with the
9 gang.

10 Q. And I may have missed it, when did you get
11 assigned to the joint task force?

12 A. I believe it was January of 2001. So my
13 first several years, from '97 to 2001, were working
14 different matters.

15 Q. Prior to the subpoena being served for this
16 particular hearing, had you been contacted in the
17 last few years at all concerning your work in 2001?

18 A. I don't recall any detailed conversations.
19 I was surprised to get the subpoena. I don't recall
20 any specific ones. If there had been, they would
21 have been very brief, or -- I wasn't familiar with
22 all of the things that were going on here, I guess,
23 is the best way I would put it. I don't have
24 specific recollection of a detailed call about things
25 here.

1 Q. You had enough to worry about with the
2 location you're at?

3 A. Yes, and a completely different assignment.

4 Q. So was your work in 2001, had it kind of
5 been pushed out of your memory for quite a few years?

6 A. Yes. I was only involved in gang-related
7 activities for less than two years. And I had not
8 done any gang-related work, per se, since then.

9 Q. When you were assigned, in January of 2001,
10 to this gang task force, what was the name of the
11 gang task force?

12 A. I believe it was something to the effect of
13 Central New Mexico Organized Criminal -- it was quite
14 a lengthy name. It was referred to as the federal
15 gang task force, but it was something, Central New
16 Mexico Criminal Organization or Violent Criminal
17 Organization Task Force.

18 Q. I might be able to help you here in a
19 little while.

20 A. Okay.

21 Q. Does the FBI have a number of joint task
22 forces that they have in various communities in which
23 they work with local law enforcement?

24 A. Yes, sir.

25 Q. And is this one of them that you're talking

1 about?

2 A. This was at the time, yes.

3 Q. So when you're assigned to that, is that
4 your sole duty, or do you also have other duties?

5 A. Traditionally, that would be your sole
6 duty.

7 9/11 happened, which was an intervening
8 event. And so much of my time after I joined the
9 task force, I was pulled away to work terrorism
10 things. And eventually, I was pulled completely away
11 from the task force to work terrorism matters. So,
12 traditionally, you would be detailed full-time there.
13 9/11 was a very different situation, because
14 terrorism became the Number 1 priority.

15 So several people, myself included, were
16 pulled off the task force; tried to juggle both
17 assignments, and eventually, I was taken full-time
18 off the task force.

19 Q. So then, between January of 2001 and
20 September 11 of 2001, your primary duties would be
21 with regards to this gang task force in New Mexico?

22 A. That's correct.

23 Q. When you began with the joint task force,
24 did you learn of the prison gang, SNM?

25 A. Yes, sir.

1 Q. What did you basically learn from the
2 beginning of your work in January?

3 A. The way it was described to me is the SNM
4 was the largest prison gang in New Mexico. It was
5 known for drug trafficking, violent assaults,
6 murders. It was considered a threat to the
7 community. And I believe in a management meeting of
8 the heads of the agencies that participated in the
9 task force, it was designated as a serious threat,
10 and they wanted it to be investigated.

11 Q. Why would this be a matter of interest to
12 the Federal Bureau of Investigation, not just state
13 authorities?

14 A. Any time you have violent crimes that reach
15 outside the prison system themselves -- for example,
16 Title 21 provides jurisdiction for drug trafficking.
17 The racketeering statute, RICO statute, all of those
18 are federal designated crimes which traditionally
19 would come under gang-type investigations. And the
20 gang reached far outside the prison. There were
21 hits; there were drugs being smuggled into the
22 prisons. So it went well beyond just the state
23 issue. That's the way it was explained to me.

24 Q. And were the federal agents, specifically
25 FBI agents, able to provide assistance to local law

1 enforcement in these matters in kind of a specialty
2 way, special way?

3 A. Yes, we provided office space, tried to
4 help organize entities from many different agencies
5 to work collectively.

6 Q. Talking a little about this office space,
7 was it just offices, or did you all have files as
8 well?

9 A. There were FBI files that were maintained,
10 and the FBI maintained the primary files for the
11 whole task force. So state and local officers who
12 came and worked on the task force also could
13 contribute paperwork to the FBI files. But it was
14 managed and operated by the FBI.

15 Q. And in regards to the joint task force,
16 would the FBI share information from time to time
17 with state authorities and vice versa?

18 A. Yes, sir.

19 Q. And the whole idea is to cooperatively work
20 together to address gang issues?

21 A. That's my understanding.

22 Q. And that was true with regard to the SNM as
23 well?

24 A. Yes.

25 Q. I'd be shocked, but I'll ask you do you

1 recall whether there was an open investigation into
2 the SNM in -- when you arrived at this position in
3 January of 2001?

4 A. I don't believe there was.

5 Q. If I showed you a document, might it
6 refresh your memory in that regard?

7 A. Sure. Again, I believe I was asked to
8 draft some of the opening documents. So I was not
9 aware that there was another case, or there would
10 have been no reason to open a new investigation.

11 Q. What I'd like to do is have you take a look
12 at Exhibit A that's already been admitted. But we're
13 going to project it up here on the screen, and it's
14 going to be on your screen as well.

15 A. Okay.

16 Q. Have you seen this document recently?

17 A. Yes, sir, I have.

18 Q. We provided it to you for your review?

19 A. No, I was not provided anything prior to my
20 questioning.

21 Q. So you were not provided with these
22 materials attached to your subpoena?

23 A. No. One page, but not -- I received the
24 front cover page of this document. That's the only
25 thing I received.

1 Q. Okay. You were able to review this?

2 A. Yes, I did go to the file based on what
3 information you requested in the subpoena.

4 Q. If you take a look, there is a case ID
5 number here. 92D-AQ-54707. Is that a case number
6 that you might have opened up?

7 A. I believe this is actually the opening
8 document to open that case file.

9 Q. And what is the date of that report?

10 A. April 23rd of 2001.

11 Q. And what was the subject of the
12 investigation?

13 A. Sindicato de Nuevo Mexico, SNM.

14 Q. Was there anything that happened in the
15 month prior to this case being opened that made the
16 SNM more of a focus of the joint task force?

17 A. There were ongoing things for years. And
18 my understanding was it was an accumulation of
19 ongoing homicides, ongoing drug trafficking. There
20 had been a homicide at BCDC, Bernalillo County
21 Detention Center, Matthew Cavalier. I believe there
22 had also been a homicide down here at the Southern
23 New Mexico Correctional Facility.

24 But my understanding, it was an ongoing
25 accumulation of years of criminal activity. It was

1 not precipitated by one specific event.

2 Q. The Cavalier murder happened in August the
3 previous year, August, 2000?

4 A. I believe it was 2000.

5 Q. And the ones you're talking about in the
6 Southern New Mexico Correctional Facility, were those
7 the dual murders that happened on the same day, March
8 26, 2001?

9 A. I was not responsible for investigating
10 those. So my recollection is it was in early 2001.
11 But those were part of the Southern. And my
12 assignment was the Northern and Central.

13 Q. So you did have an opportunity to look at
14 Exhibit A?

15 A. Yes, sir.

16 Q. If you can scroll down a little bit on
17 Exhibit A. The first or the second full paragraph
18 has a header there that is in regards to the SNM
19 homicides; is that right?

20 A. Yes, sir.

21 Q. And what this investigative plan -- you put
22 this investigative plan together; is that right?

23 A. I was given a bunch of information and
24 asked to summarize it, so yes, I did draft it.

25 Q. And what this document indicates is that,

1 "the investigation of a number of SNM murders, either
2 ordered or carried out by SNM members, would be
3 beneficial in showing the gang's violent criminal
4 nature and the gang's willingness to do anything to
5 protect its drug-related activities"; is that right?

6 A. I think that's correct.

7 Q. So the homicides were at least one of the
8 focuses of this investigative plan?

9 A. Yes, sir.

10 Q. And, in fact, if we scroll down a little
11 bit to the next page, if possible, the two murders at
12 Southern were one of the focuses -- were one of the
13 sets of murders that you were looking at?

14 A. I need to clarify that. I was given a
15 summary of statewide information, and I did put that
16 in here. If you would like, I can explain. But
17 shortly after this time period, I was assigned to
18 focus on things in Northern and Central New Mexico.
19 So this document was a statewide document.

20 There was also a task force, I believe, in
21 Las Cruces, another violent crime task force. So I
22 was not primarily responsible for investigating these
23 particular homicides.

24 Q. But you have a write-up about these two
25 homicides in this investigative plan?

1 A. As a part of the entire gang, yes, sir.

2 Q. If we could scroll down to page 6 of
3 Exhibit A. As part of the investigative plan was
4 there at least a plan to collect information about
5 all known suspected SNM members?

6 A. Yes, sir.

7 Q. And was there a plan to collect the
8 information such as phone calls of the inmates,
9 letters that the inmates sent out, their actual
10 Corrections' records of the particular SNM members?

11 A. Yes, sir.

12 Q. Now, were you working at that time -- well,
13 actually, you had indicated you didn't know the exact
14 date that that 54711 investigation began, is that
15 right, you don't recall that today?

16 A. When you say the 54707 --

17 Q. That was the case number that we talked
18 about at the top of -- I'm sorry, 54707.

19 A. My recollection in the way these cases have
20 to be opened -- because this is a particular type of
21 investigation, there has to be an entire summary
22 written and approval. And I believe that's what this
23 document was. So I think this would have been the
24 primary thing, notifying our headquarters of a major
25 gang investigation. That's my understanding of what

1 this document was when I drafted it.

2 Q. I want to show you a page of materials that
3 we were provided in discovery. It's page 598 of
4 discovery. Take a look at that. It appears, at
5 least on the top, that there was a full investigation
6 of the SNM that was initiated November 20 of 2000, or
7 at least some kind of investigation; is that right?

8 A. I'm not familiar with that case file
9 number. I don't believe that was ever assigned to
10 me. So that could have been a different task force.
11 It could have been some other investigation. But my
12 understanding is there was not an SNM investigation
13 going on on our task force, and in the area I worked.
14 So --

15 Q. So the Central New Mexico Gang Task Force,
16 did they work at all with the Southern New Mexico
17 Gang Task Force?

18 A. Obviously, there was a sharing of
19 information, but we operated separately because -- in
20 fact, I believe in June, they asked me to formally
21 document the fact that I would be focusing on Central
22 and Northern New Mexico, and not Southern. And
23 that's why I was not intimately involved in these
24 murder cases in Southern New Mexico. They had their
25 own task force.

1 Q. But you say you would coordinate between
2 the task force. Would that be when the
3 investigations would overlap?

4 A. This investigation -- assuming that it is
5 an SNM case, which I don't believe I've actually
6 looked at this -- this could have been a drug case;
7 it could have been some other case that also targeted
8 those folks. I was not aware of it. And it didn't
9 really pertain to my task force because our task
10 force was not working the SNM at the time, as far as
11 I'm aware of.

12 Q. Agent Pedersen, what I was wondering about
13 is whether, if there were overlapping investigations
14 that were from the two task forces that overlap in
15 focus, would they share information between the task
16 forces?

17 A. Yes, sir.

18 Q. And I think you indicated that you believe
19 this document I'm showing you here, it might be from
20 the Southern New Mexico Gang Task Force; in fact it
21 says that, right?

22 A. Well, the reason I say that, that's not a
23 case file that I recognize as having worked on. So I
24 would assume, if it is what you represented, then
25 it's an SNM case, it would have been from somewhere

1 else, and not from Albuquerque.

2 Q. Looking at this page of discovery it
3 indicates that there is a confidential report
4 regarding the murder of inmates Frank Castillo and
5 Rolando Garza at the Southern New Mexico Correctional
6 Facility; is that right?

7 A. I'm sorry, what? Yes, I'm now reading that
8 portion that you mentioned.

9 Q. At the time that you were stationed here,
10 did you work with an individual by the name of
11 Michael Sprunk from time to time?

12 A. Yes, I have met him.

13 Q. And, in fact, if we go back to Exhibit A.
14 Did you attend an executive board meeting of Central
15 New Mexico Violent Criminal Organization Task Force?

16 A. I don't believe I was invited. That's
17 usually a meeting for high-level sheriffs, high-level
18 FBI people. This information was related to me, I
19 believe, by my supervisor, so I don't believe I
20 actually attended that meeting, sir.

21 Q. So it was related to you that they had this
22 meeting?

23 A. Yes.

24 Q. And for purposes of -- can we just call it
25 the Central Task Force, instead of that long name?

1 A. Sure.

2 Q. At least one U.S. attorney attended the
3 Central Task Force?

4 A. That was my understanding.

5 Q. And there was a plan at that point that the
6 most effective way to dismantle the SNM would be to
7 use a continuing criminal enterprise prosecution to
8 do so; is that right?

9 A. That was my understanding of the plan, yes,
10 sir.

11 Q. And when we were talking earlier about the
12 collection of phone calls, files, mail, and things
13 like that, that was to support a potential
14 prosecution of a continuing criminal enterprise?

15 A. Yes, sir.

16 Q. Now, when you're working on these joint
17 task forces, are you at all concerned that the local
18 authorities or state authorities you're working with
19 might compromise the investigation?

20 A. I think there is a possibility anytime a
21 lot of people know about a case, that we -- law
22 enforcement worries that a case could be compromised,
23 yes.

24 Q. And at times, when you working on these
25 joint forces, and there is a focus on a particular

1 group, or particular gang, does the FBI collect all
2 the evidence that exists, or do you leave some in the
3 hands of the state and local authorities?

4 A. We did not collect all of the evidence,
5 because if it was not a charge that we thought
6 federally would be prosecuted, it would not
7 necessarily be something we would collect. So I
8 think that's a pretty broad question.

9 If it was pertinent to something that we
10 were working on, or a defendant that we were trying
11 to prosecute, then I think we would normally request
12 that. But I wouldn't say it would be fair to say
13 that we sought everything from state and local
14 agencies.

15 Q. So it's basically on a case-by-case basis?

16 A. It depended upon -- I don't think you could
17 gather all of the information on all of the members
18 of the SNM. So, yes, it was focused. If there was
19 specific crimes, specific individuals, things like
20 that, we would request it.

21 Q. So, in April of 2001, when the FBI and the
22 joint task force started to investigate the SNM for a
23 CCE charge, what did they do to, I guess, martial the
24 evidence that might be out there?

25 A. I know there were several meetings with the

1 New Mexico Department of Corrections, specifically
2 with Will Jaramillo, who I believe ran -- at the time
3 it was called the STG, Security Threat Group -- and I
4 believe Mr. Jaramillo oversaw all of the gang matters
5 within the Corrections Department. We requested
6 records from him.

7 The prison system had their own methodology
8 of documenting gang membership, things like that. So
9 all of those records were obtained from Corrections.
10 They provided histories on some of the different
11 members of the gang. And that was all placed in this
12 file.

13 So there was an initial push -- part of the
14 problem is we didn't necessarily know who all of
15 those players were. Most had been brought in from
16 other areas, had not been working gangs, myself in
17 particular. And so a lot of it was familiarizing
18 ourselves with the prison gang, who the members were,
19 the associations, how they operated.

20 Q. Can you give us an estimate of how many FBI
21 agents were assigned to the Central Task Force?

22 A. It varied from time to time. There were
23 usually four or five, plus the state and local. We
24 also asked that Corrections put a probation and
25 parole officer. My understanding is that probation

1 and parole reports through Corrections. And Nick
2 Costales from probation and parole was brought on to
3 assist us, because he had been dealing with a lot of
4 the gang members.

5 Q. So at the task force is there someone that
6 directs a particular investigation, such as is it an
7 FBI person that directs the investigation, or is it a
8 state person, or --

9 A. It can vary. In this particular instance,
10 I was assigned to be the primary investigator for the
11 SNM for the Central Task Force. Each of the other
12 FBI agents was assigned to their own gang. And some
13 of the state and local officers that were deputized
14 also could have had their own gang cases.

15 Q. So you were the primary case agent?

16 A. For a short time period, yes, sir.

17 Q. And you knew that there was a possibility
18 of a federal prosecution of the SNM that could
19 include homicides they committed?

20 A. Yes, sir.

21 Q. Including the 2001 homicides?

22 A. Yes.

23 Q. I take it you didn't collect all the
24 evidence that might be out there on the SNM at that
25 point in time?

1 A. No. Initially, it was to get a baseline of
2 who the people were, and then to develop intelligence
3 about the leadership and their activities.

4 Q. So, for example, with the homicide,
5 potential homicide portions of the CCE investigation,
6 would I be correct in stating that you didn't collect
7 the physical evidence that was being held?

8 A. I was not involved with that homicide
9 investigation. I did go and get reports and other
10 things for other murders; the Cavalier murder, for
11 example, because it was within the jurisdiction that
12 I had been asked to work. But I was not, I believe,
13 in any way involved with the actual homicide
14 investigation of the two individuals in question.

15 Q. Even with the Cavalier murder, you didn't
16 pick up all the physical evidence; is that right?

17 A. I believe we did not pick it up. It was in
18 custody of APD Gang Unit. And because there was
19 declination on the federal prosecution, we did not
20 collect the evidence.

21 Q. Now, when you picked up this investigation
22 of the SNM, did you have discussions with the state
23 and local authorities about their obligation to
24 preserve materials that might be relevant to a future
25 CCE prosecution?

1 A. It was discussed in general when they
2 became federally deputized. And we talked about our
3 rules. And all of that information, once they were
4 deputized and a part of the task force, they needed
5 to comply with our rules. So frequently, we would
6 instruct them -- they would come to us with
7 questions. But we did it under the federal
8 guidelines at that time.

9 Q. Which individuals from the New Mexico
10 Department of Corrections were deputized as part of
11 this task force in 2001, that you can recall?

12 A. The only -- we worked very closely with the
13 Department of Corrections. My -- again, this is 17
14 years ago -- my recollection is Nick Costales was the
15 only person that was assigned full time, or at least
16 was designated from Corrections as a task force
17 member. Whether or not he was actually deputized,
18 that goes through FBI executive management, but I
19 know he did have access to our work space and worked
20 closely with us.

21 Q. How about New Mexico State Police?

22 A. There were several over the time period I
23 was there. Ramon Casaus, possibly. But there were
24 two or three New Mexico State Police officers that
25 had been detailed there.

1 Q. Was Michael Sprunk one of them?

2 A. I don't believe Michael Sprunk was with New
3 Mexico State Police. I thought he was with
4 Corrections.

5 Q. So he would have been one of the
6 Corrections people that worked with you?

7 A. I talked to him on occasion. I don't
8 believe he was a task force officer.

9 Q. How about Edgar Rosa?

10 A. I'm sorry?

11 Q. Edgar Rosa? Does that name sound --

12 A. I don't recall who that is.

13 Q. Agent Pedersen, you seem to be looking over
14 to the prosecution table for assistance. If you can,
15 just focus here, okay?

16 A. I'm not familiar with that name.

17 Q. How about -- did you work with Special
18 Agent Andrew Armijo?

19 A. Are you referring to FBI Agent Andrew
20 Armijo?

21 Q. Yes. I thought it was special agent, but
22 is there a difference?

23 A. There are special agents with other
24 agencies as well.

25 Q. Oh, okay.

1 A. I think there was an agent, I think,
2 assigned to Las Cruces that worked on the Southern
3 New Mexico Task Force named Andy Armijo, or Andrew.
4 I called him "Andy."

5 Q. What is an ITAR investigation? I-T-A-R?

6 A. I believe it stands for Interstate
7 Transportation in Aid of Racketeering.

8 Q. If we go back to Exhibit B. What I'm going
9 to do is approach you with my laptop, and I'll
10 represent to you this is Exhibit B. Okay?

11 A. Okay.

12 Q. Just so we don't have to call in every FBI
13 agent that may have been involved in 2001, does it
14 appear that there was at least an ITAR investigation
15 of the SNM that was in existence as early as November
16 28, 2000?

17 A. It would appear so based on this document.

18 Q. And it appears that it was from the
19 Southern New Mexico Gang Task Force, based on the
20 initials?

21 A. Based on who approved it, and the people
22 involved, yes.

23 Q. Is this an FBI form?

24 A. It appears to be, yes, sir.

25 Q. And if you could scroll just to the bottom

1 of the page, does it appear that you may have
2 received a copy of this report back in 2001?

3 A. It appears that at some point it would have
4 been distributed to me. I was not on the task force
5 at the time this document was drafted. So it would
6 have been sometime --

7 Q. Afterwards?

8 A. -- afterwards. I couldn't tell you when
9 that was. But my recollection was I was not assigned
10 to the task force until after the Christmas break,
11 between 2000 and 2001.

12 Q. If we could scroll to the next page of this
13 document. That's your name at the bottom again; is
14 that right?

15 A. Yes.

16 Q. And if we can scroll just a little bit
17 higher. It appears that in at least at some point in
18 time the FBI task force that had started in 2000 on
19 the SNM was collecting the entire security threat
20 assessment of the SNM; is that right?

21 A. According to this, they were, in Las
22 Cruces, yes.

23 Q. I'd like to turn to page 27047 of the
24 discovery.

25 Agent Pedersen, did you -- when you were on

1 the task force, did you conduct some interviews of
2 individuals in which some of the questions related to
3 the murders that had happened at the Southern New
4 Mexico Correctional Facility in March of 2001?

5 A. Yes, sir.

6 Q. And I'm showing you this report, or this
7 document. Is this one of the interviews that you may
8 have conducted back in 2001?

9 A. Yes, I believe this is a transcription of a
10 videotaped interview that I did.

11 Q. During that interview you asked some
12 questions of this informant?

13 A. I fully debriefed this informant about the
14 SNM, and this individual's knowledge of the SNM.

15 Q. Including the murders?

16 A. Yes.

17 Q. If we could go to page 55340 of discovery.

18 MR. BECK: Is this an exhibit, Mr. Castle?

19 MR. CASTLE: No, it is not.

20 Q. Oh, I apologize -- the date of the material
21 I was just showing you a few minutes ago was dated
22 June 1, 2001, which was the interview you were
23 talking about?

24 A. Yes.

25 Q. And then what are these different case

1 numbers on the bottom here?

2 THE COURT: Is there an identifier for this
3 exhibit?

4 MR. CASTLE: Yes. It's page 27047 of
5 discovery. It's not an exhibit. I'm just trying to
6 refresh his memory and show him some documents.

7 A. The "92D," I believe is the intelligence
8 case regarding the SNM. The "270B" would relate to
9 this particular informant. And "166E" was my case
10 that I worked that dealt with the Central and
11 Northern portion of the SNM, which is what I was
12 assigned to work.

13 Q. And would I be correct in assuming the
14 reason you put all three case numbers on there is
15 because they're related with respect to this witness?

16 A. This witness provided information about
17 more than just my ongoing investigations. And so the
18 intelligence case would capture things related to
19 other investigative matters, things that other task
20 forces or state and locals, might have an interest
21 in.

22 Q. So that a copy of this report would go --

23 A. That's why I put it in multiple files, yes,
24 because there was more information than just relevant
25 to subjects I was currently investigating.

1 Q. Was that the only person that you
2 interviewed in 2001, in which the murders at Southern
3 were the subject of the interview?

4 A. When you say "the subject," I don't believe
5 I did others -- I don't think I did any interviews
6 where that murder was the primary topic. It came up,
7 because with almost every SNM member I met, I would
8 debrief them on every possible crime and criminal
9 thing they knew about. So there were other people I
10 interviewed that mentioned something about these
11 homicides.

12 Q. So, in other words, the net was cast fairly
13 wide concerning the SNM?

14 A. Yes, sir.

15 Q. And that would include the 2001 murders, if
16 the person knew something about that.

17 A. I asked about every potential crime that
18 they knew about, which would include those.

19 Q. Then would you share the information that
20 you obtained with the New Mexico State Police or the
21 Department of Corrections?

22 A. They were actively involved in the
23 investigations and doing some of the interviews. So,
24 normally, there was not a passage directly to them.
25 There could have been. But normally, their task

1 force officers would be involved in the weekly
2 briefings. They would be involved in the
3 investigation. So there really wasn't a necessity to
4 pass reports. They were involved in the
5 investigations.

6 Q. So let's talk a little bit about these
7 weekly meetings. And I'm only going to confine
8 myself to 2001, after the murders at the Southern
9 facility. Were the various task force members,
10 including Corrections, State Police, and yourself,
11 sharing information from time to time concerning
12 developments in the 2001 murder investigation?

13 A. We were not investigating the 2001 murder
14 as a primary target. In June of 2001, my
15 understanding is -- and I was asked to open a
16 separate case. You mentioned what the 166E
17 investigation was. Our focus was on the SNM criminal
18 activities in central and northern New Mexico. So we
19 were not actively investigating these two homicides.

20 There was a task force here in Las Cruces.
21 In fact, the document, where I opened this file, I
22 cc'd Andy Armijo. My understanding was our
23 management had said: We have another gang task force
24 in Southern New Mexico, you focus on Central and
25 Northern, if they want to do the Southern cases,

1 that's fine.

2 So there would be a sharing of information.
3 We were not actively pursuing -- that was not one of
4 my primary targets, per my management, to
5 investigate.

6 So we obtained information about it. But I
7 hesitate by your characterization, because our focus
8 was not the homicides in Las Cruces.

9 Q. Okay. So, in other words, the FBI
10 generally had a focus on the SNM; is that correct?

11 A. Yes, sir, in New Mexico.

12 Q. And then a certain task force might have a
13 piece of that investigation?

14 A. Yes.

15 Q. And so your piece of that investigation,
16 for possible federal prosecution, focused on things
17 that happened in Central New Mexico?

18 A. Central and Northern, and then Southern had
19 it's own task force.

20 Q. So Southern would be the one that might be
21 investigating the 2001 murders, because it's in
22 that --

23 A. If they were involved. That was not a
24 primary focus of our task force.

25 Q. Let me finish the sentence, okay.

1 So the Southern would be in charge of
2 investigating the 2001 murders, if the FBI was
3 focused on that because it was in their geographic
4 area?

5 A. Yes, sir.

6 Q. And as these task forces would work, would
7 they keep the U.S. Attorney's Office updated from
8 time to time?

9 A. Yes.

10 Q. If we can go to page 605 of the discovery,
11 which appears to be an FBI 302 form dated April 9,
12 2001. Does that appear to be what that document is?

13 A. It's not in the standard format. It looks
14 like it's a historical electronic format. But that's
15 what it represents to be.

16 Q. And would this have been a 302 that would
17 have been prepared for the Central or the Southern
18 task force?

19 A. I'm not familiar with that case file as
20 being one that we worked. So my understanding is it
21 would have been the Southern.

22 Q. Okay. And I think I asked you earlier
23 about Edgar Rosa. Was he an individual assigned to
24 the Southern or do you not know?

25 A. I don't even know who he is. I don't

1 believe I ever met him.

2 Q. He wasn't assigned to Central?

3 A. He was not in our task force.

4 Q. Right. Thank you.

5 Some of the New Mexico prisons are located
6 in the central and northern portions of the state; is
7 that correct?

8 A. That's correct.

9 Q. And during the investigation of the SNM,
10 that you were involved in, in 2001, would you
11 exchange information with STIU officers from any of
12 those prisons?

13 A. At the time, I believe -- STIU is a new
14 name for me. STG, the Security Threat Group was the
15 entities that I worked with. I dealt primarily with
16 Will Jaramillo because he was the head person over
17 all of those groups. But we did go out and talk to
18 other people on occasion, yes.

19 Q. So Will Jaramillo was the STG coordinator
20 for the State?

21 A. Yes, that's my understanding.

22 Q. And he would funnel --

23 A. He was our primary point of contact.

24 Q. So he would, perhaps, collect information
25 and then provide it to you all?

1 A. Yes, sir.

2 Q. And vice versa?

3 A. Yes, sir.

4 Q. If we could look at Exhibit G. This is
5 another report from Edgar Rosa. And I take it you
6 would not know anything about this exhibit?

7 A. I'm sorry, sir, I don't.

8 Q. Did you interview an individual by the name
9 of Toby Romero in your investigation?

10 A. Yes, sir.

11 Q. And did Mr. Romero -- well, do you recall
12 when you interviewed him?

13 A. I believe it would have been in June of
14 2001.

15 Q. Did you have an opportunity to look at that
16 transcript of that interview before testifying today?

17 A. Are you talking about the one that you
18 referenced before as an exhibit?

19 Q. Yes.

20 A. Yes, I reviewed portions of it.

21 Q. All of it wasn't -- well, the portions that
22 you saw -- what portions did you review, I mean?

23 A. I believe two thirds of it was available
24 electronically, so I was able to review that. I
25 specifically did the search for the names of Castillo

1 and Garza to find any reports that I had written, and
2 I believe I reviewed those sections.

3 Q. And you indicated, I think earlier, that
4 was video recorded?

5 A. Yes, sir.

6 Q. And do you know what came of that video
7 recording? Would you have stored it somewhere?

8 A. My understanding is it probably would have
9 been submitted to an ELSUR file. And then it was
10 transcribed; I believe, the prosecutors requested
11 that it be transcribed.

12 Q. Did Mr. Romero, when he was talking to you,
13 did he indicate that an individual that he identified
14 as Smurf had talked to him about murdering Frank
15 Castillo?

16 A. My recollection is that he did mention the
17 name "Smurf."

18 Q. Now, when he talked to you, he told you
19 things that he'd heard through the grapevine, and
20 also things that he personally saw or heard; is that
21 right?

22 A. I believe a lot of his information about
23 that was secondhand. My recollection is he was not
24 at Southern when the murders occurred.

25 But, yes, I documented -- we documented

1 whatever he had to tell us about the incident.

2 Q. I want to focus only on the stuff that he
3 saw personally or heard personally; not the things
4 that he heard secondhand, if I could.

5 He left the Southern facility shortly
6 before the homicides in March of 2001; is that right?

7 A. My recollection is that he left and was not
8 there at the time of the homicides.

9 Q. Did he indicate to you that he had left
10 shortly before the murders happened?

11 A. I believe that was part of his statement to
12 us.

13 Q. And in his interview with you, he
14 specifically indicated that Smurf was going to kill
15 Castillo, and that Smurf wanted Mr. Romero to kill
16 Mr. Garza; is that right?

17 A. I believe that's correct.

18 Q. Now, Smurf is an individual known as Leroy
19 Lucero; is that right?

20 A. My recollection, after 17 years, is that
21 was a prison nickname or a gang name for Mr. Lucero.

22 Q. If we could search Exhibit C for Lucero.

23 I know it's a long time, but do you recall
24 whether he gave the actual name for Smurf?

25 A. I think I might have to go back and review

1 the actual interview. My recollection was he may
2 have told us: Go talk to this person, he knows who
3 it is, or eventually he told us -- but I think there
4 may have been some hesitation initially.

5 Q. We're going to show you PDF page 141 of
6 Exhibit C, which is also discovery page 14468. It
7 will be up on your monitor here in a second.

8 Do you see where you asked him:

9 "Just for the record, who is Smurf?"

10 And then he identifies him a little farther
11 down as Leroy Lucero from Las Vegas?

12 A. Yes.

13 Q. So would it be fair to say that at that
14 point the FBI at least had information from Mr.
15 Romero that Leroy Lucero was planning the murders of
16 the two people who died at the Southern facility in
17 2001?

18 A. Mr. Romero had shared that information with
19 us, yes.

20 Q. And he said he had a personal conversation
21 with Leroy Lucero?

22 A. About --

23 Q. About the --

24 A. -- the murders.

25 Q. -- planning the murder?

1 A. Yes.

2 Q. And this would have been before Mr. Romero
3 left the facility?

4 A. My understanding is that conversation took
5 place before he left. That's my recollection.

6 Q. Do you know what happened to Mr. Romero? I
7 mean, is he alive?

8 A. I have been told that he is dead. But I
9 haven't done any personal investigation into that
10 after I left the gang task force.

11 Q. Would you have distributed this interview
12 of Mr. Romero to the Southern Gang Task Force?

13 A. It would have been placed in the file, and,
14 therefore, they would have had access to it. I don't
15 know if it was specifically sent to them as a
16 separate item.

17 When we collected information, it would be
18 put in the file. And they would have had access to
19 this file, as well as anything I was working on. So
20 there was an intelligence analyst, who would be the
21 primary facilitator between the two of us. Because
22 we were investigating separate things, the analyst
23 would look at both of those things and pass
24 information back and forth. But the agents did less
25 of that than the analyst did.

1 Q. So what I understand is you probably don't
2 remember where it was distributed, but it makes sense
3 that it would have been distributed to the Southern
4 Gang Task Force?

5 A. I would assume that our analyst would have
6 shared that. But it would have been put in the file.
7 So it was available.

8 Q. And would you have shared that with
9 Lawrence Jaramillo?

10 A. I believe he would have known about that.
11 By Lawrence are we talking -- is it Will?

12 Q. I'm sorry, "Will," I apologize.

13 A. "Will." I'm sorry, I just want to make
14 sure.

15 Q. There are a lot of names.

16 A. Mr. Jaramillo would have known about that,
17 either through Mr. Costales, who was assigned to the
18 task force, or as a part of a weekly meeting or
19 update.

20 Q. After this interview, did you make any
21 attempt to interview Mr. Leroy Lucero?

22 A. Again, I was not investigating this
23 particular homicide, so I don't believe -- that
24 was -- I was focusing on other issues. So, no, I did
25 not personally pursue that because it was outside of

1 my assignment.

2 Q. No, I understand. You would interview SNM
3 members, and gather information that was something
4 that might be focused on your investigation, but
5 you'd collect information generally that might be the
6 focus of any other FBI investigation; is that right?
7 I'm sorry, that was poorly worded.

8 A. I'm not quite sure what you're asking.

9 Q. Okay. You'd interview SNM members from
10 time to time; is that correct?

11 A. Yes, sir.

12 Q. And when you interviewed them, you wouldn't
13 just confine yourself to your immediate
14 investigation, but you would include other open SNM
15 investigations in your inquiry?

16 A. I asked everything about the SNM. Because,
17 if you have somebody who is cooperating, it doesn't
18 make sense to just ask them about the focus of mine.
19 So we would ask them about all criminal things. The
20 analysts then would share that information and pass
21 it back and forth and coordinate that.

22 Q. And do you recall whether you had shared
23 this interview with Mr. Romero with Special Agent
24 Armijo in the Southern Task Force?

25 A. I don't recall specifically having that

1 discussion. But it very well could have happened. I
2 just don't recall that specific discussion, sir, I'm
3 sorry.

4 MR. CASTLE: I don't have any other
5 questions.

6 THE COURT: All right. Thank you, Mr.
7 Castle.

8 Any other defendant have direct examination
9 of Mr. Pedersen?

10 All right. Mr. Beck, do you have
11 cross-examination?

12 MR. BECK: I do, Your Honor.

13 THE COURT: Mr. Beck.

14 CROSS-EXAMINATION

15 BY MR. BECK:

16 Q. Good afternoon, Agent Pedersen.

17 A. Good afternoon.

18 Q. Now, I think when you were talking with Mr.
19 Castle, you said your focus was on central and
20 northern New Mexico in the SNM?

21 A. That's correct. In my review of documents
22 related to my testimony, I actually was asked to
23 draft a document, and open an investigation
24 specifically for central and northern New Mexico, as
25 it pertains to the SNM. And that was the 166 file

1 number that Mr. Castle referred to in an earlier
2 document. So my focus was on crimes and ongoing
3 criminal activity at the correctional facilities, but
4 also geographically in the northern and central part
5 of New Mexico.

6 Q. And I think you said with Mr. Castle that
7 your knowledge of the Southern Gang Task Force, their
8 investigation into these 2001 homicides was, quote --
9 you were told, quote, "If they want to do Southern
10 cases, that's fine." Was that the extent of your
11 knowledge of whether the Southern Gang Task Force was
12 investigating?

13 A. We had a separate governing board, is my
14 understanding. And so the other federal, or state
15 and local agencies that tasked their officers to work
16 with us would kind of determine what we worked. And
17 there was an executive board meeting -- the task
18 force that I was involved in, and my investigative
19 things were to focus on the central and northern part
20 of the state. There was a separate group down in Las
21 Cruces, in this part of the state, that also was
22 looking into the SNM, apparently. But they had their
23 own board of governors, their own people that
24 directed that. So I think that would be a fair
25 statement.

1 Q. Okay. Yeah, what I'm trying to say is you
2 don't know whether the Southern Gang Task Force was
3 investigating the 2001 homicides; is that fair to
4 say?

5 A. I don't know the specific activities they
6 were doing. My understanding is they did start
7 looking into the SNM.

8 But I had so much of my own work, and then
9 getting pulled into 9/11 -- they might have cc'd me
10 on documents, or said, Hey, we're doing this, but I
11 had my own investigations and my own subjects. So I
12 knew they were there. I would cc Andy Armijo if I
13 did something occasionally. But there wasn't a lot
14 of ongoing communication. The analyst was the
15 primary person to share that information or to update
16 things. We were runnin' and gunnin', doing our own
17 investigation.

18 THE COURT: Mr. Beck, would this be a good
19 time for us to take one of our afternoon breaks?

20 MR. BECK: Sure, Your Honor.

21 THE COURT: All right. We'll be in recess
22 for about 15 minutes.

23 (The Court stood in recess.)

24 THE COURT: All right. We'll go back on
25 the record. All right. Mr. Pedersen, I'll remind

1 you that you're still under oath.

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Beck, if you wish to
4 continue your cross-examination of Mr. Pedersen, you
5 may do so at this time.

6 MR. CASTLE: Your Honor, just before we
7 start, Mr. Cooper had to leave for the day.

8 THE COURT: Yeah, Ms. Bevel explained that
9 to me. Sorry. Tell him we hope he gets to feeling
10 better.

11 CROSS-EXAMINATION

12 BY MR. BECK:

13 Q. Mr. Pedersen, you talked about 9/11, and I
14 want to go back to that in just a second, but did you
15 present an SNM-related case to the U.S. Attorney's
16 Office for possible prosecution?

17 A. Yes. There were three or four different
18 things that I was focusing on. One was Angel Munoz,
19 who was the jefe at the time. And I presented
20 information -- we conducted a search warrant at his
21 home shortly after he got out of prison. And I
22 believe he was charged federally. I was, I believe,
23 the person responsible for that federally. There
24 were a couple of --

25 Q. Let me stop you there. So Angel Munoz, do

1 you know if he's a defendant in this case?

2 A. I believe he's diseased.

3 Q. Fair enough. Does that help refresh your
4 memory whether he's a defendant in this case?

5 A. I believe not.

6 Q. Okay. Who is next?

7 A. There were a couple of corrections officers
8 who were assisting the SNM in smuggling drugs into
9 the prison. There were two corrections officers that
10 we addressed in Estancia. I believe one of them was
11 named Sharon Easley, and the other, Elias Saenz. And
12 then --

13 Q. Were they prosecuted?

14 A. I believe they were eventually prosecuted
15 at the state level. But that was part of our
16 investigation, part of the drug trafficking aspect.

17 Q. The U.S. Attorney's Office did not
18 prosecute that?

19 A. They did not prosecute those.

20 I presented a case on the homicide of
21 Matthew Cavalier. That was a homicide at Bernalillo
22 County Detention Center. That was within my region,
23 so that one I investigated, and I believe it was
24 declined by the U.S. Attorney's Office. But that was
25 one of the murders that I was actively investigating.

1 Q. So out of the SNM investigation, is it fair
2 to say that, out of your investigation, the cases you
3 presented to the U.S. Attorney's Office, the only
4 prosecution that resulted from that was for Angel
5 Munoz?

6 A. Yes, sir.

7 Q. And what were the charges there?

8 A. I believe it was a career criminal charge
9 based on the heroin and the drug that we found -- or
10 the heroin and the gun that we found at Mr. Munoz'
11 home.

12 Q. And then -- as I said, I was going to come
13 back to 9/11. Why was that a significant event in
14 relation to your investigation in the SNM enterprise?

15 A. I was at the headquarters city office the
16 morning of 9/11. And before the second plane hit the
17 second tower, the SAC came to me, and he said: Set
18 up a command post, this appears to be an act of
19 terrorism. And that pretty much changed my career
20 for the next five years.

21 On paper, I was still assigned to the gang
22 task force, but I spent probably three or four months
23 working mostly counter-terrorism matters.

24 And then I was sent to Salt Lake City in
25 early 2002 for approximately 45 days to work the

1 Winter Olympics. There were serious terrorism
2 concerns. Obviously, we just had 9/11. So I was
3 sent up there. I believe we worked about 45 days
4 straight, 12-hour shifts. So when I came back, they
5 gave us time off, because we hadn't really been able
6 to take time off for a month and a half.

7 So for about six months, through late
8 August, first week or two of September, through
9 probably March, I did very little work on the SNM, or
10 much gang work of any kind. There may have a few
11 pieces of paper, a few things that had to be done
12 administratively. But most of my time became focused
13 on terrorism things at that point.

14 Q. Is that true for other members of the FBI
15 who were on the Central New Mexico Violent
16 Organization Task Force with you?

17 A. I know that Agent Howington, at some point,
18 was transferred off. I don't recall what squad he
19 was transferred to. But it had a significant impact.
20 And I was the primary case agent on the SNM
21 investigation, on that task force. So I think that
22 was one of the precipitating factors was, the lead
23 investigator was gone.

24 We did a few additional things, but by
25 October or so of 2002, I had been sent to Arabic

1 training and terrorism classes, and I no longer had
2 any involvement with the task force on a day-to-day
3 basis.

4 Q. I think you said, in terms of sharing
5 information with the Department of Corrections during
6 their investigation, you asked for and were provided
7 some background information on specific SNM members;
8 is that right?

9 A. Yes, sir.

10 Q. You also earlier talked with Mr. Castle
11 that -- about if you were seeking to charge a
12 particular person, then you asked for information on
13 that particular person; is that right?

14 A. Yes.

15 Q. And then I think you also spoke with Mr.
16 Castle about concerns that investigation -- you know,
17 the fact that you're investigating someone may get
18 out; is that a concern that you have, when you're
19 working?

20 A. It's always a concern. Because evidence
21 can disappear. Then subjects may act differently, if
22 they know they're being pursued. So it was also a
23 caution that we had in gang investigations, was to
24 try to limit the number of people that knew
25 specifically who we were investigating.

1 Q. So in pursuit of this investigation, you
2 didn't ask New Mexico Corrections Department for a
3 list of their internal sources, did you?

4 A. They shared some names and information in
5 general with us, but I don't recall -- they had their
6 own sources. So I did speak with them, and I think
7 they suggested people that we could try to talk to.
8 On some occasions those people had no interest. In
9 others, it was kind of a game of "what will you give
10 me?"

11 But my understanding is they had some of
12 their own internal sources. We did share information
13 back and forth. But I don't recall ever seeing
14 something that listed all of the Corrections
15 Department sources.

16 Q. I think that answered my question. Thank
17 you.

18 I'm going to take you to Defendant's
19 Exhibit B. What is the significance of the 166E
20 number that's highlighted there, on the top of that?

21 A. Right. My understanding is that the "92"
22 was an intelligence case. The "166E" was an actual
23 substantive -- they're working towards gathering
24 evidence and potentially prosecuting someone.

25 So when I opened an "166E" case, we were

1 looking at Angel Munoz, we were looking at these
2 prison -- the corrections officers that were bringing
3 drugs in, the Matthew Cavalier. So my recollection,
4 from 17 years ago, is that's what we would do for a
5 substantive criminal investigation, rather than an
6 intelligence big picture case.

7 Q. And for an intelligence case, I think you
8 talked about earlier having files that other agents
9 may pick pertinent information out of. Is that what
10 an intelligence file would be?

11 A. Initially, for example, those of us who had
12 no gang investigation background, we contacted other
13 agencies -- Corrections, in particular, in this
14 regard -- to get information on who the members of
15 the gang were, the basic background information,
16 which we then would reposit in that 92 case.

17 But as we started developing sources, or
18 information about potential criminal charges, at that
19 point, we would open a 166 case.

20 Q. Okay, thank you.

21 And I want to take you to Exhibit A,
22 Defendants' Exhibit A. Now, I think you went over
23 this with Mr. Castle. And I just want to make sure
24 that I'm understanding this correctly. Your
25 intention with this was to open sort of this

1 92D-AQ-54707 investigation into the SNM?

2 A. Yes, this was the opening of an
3 intelligence case on the SNM Gang per instructions
4 from my management for the Central Task Force -- I
5 believe that's the term we decided to use for it.

6 Q. Is it fair to say that this document
7 reflects the current state -- well, let me ask this
8 question first: I think you said that the
9 information in here came from another document or
10 from another source.

11 A. This would include open source information,
12 other discussions with Corrections. This was just a
13 summary of things that were allegedly known, or
14 things summarizing what the SNM was doing; what their
15 believed crimes were, and then kind of set out an
16 investigative plan that we hoped to carry out.

17 Q. Okay. Is it fair to say that this was the
18 investigative plan -- again, you said earlier, the
19 two homicides here in Southern New Mexico that you
20 weren't pursuing -- is it fair to say that this is an
21 investigative plan for the whole background of the
22 SNM statewide? At least the background information
23 for them?

24 A. The background information came from all
25 the sources that I had, which would have been open

1 source, Corrections, everything else.

2 Q. Okay.

3 A. I opened, two months later, an actual
4 substantive 166E, where I started pursuing criminal
5 investigations against specific individuals
6 associated with the SNM.

7 Q. All right. And that answers my question.

8 So I'm going to take you to page 2 of this,
9 and I'm going to direct your attention to the bottom
10 of the first paragraph there, the last sentence,
11 where it says, "NMSP and the Department of
12 Corrections are investigating and a report should be
13 obtained from these agencies." Do you see where it
14 says that?

15 A. Yes.

16 Q. Does that indicate to you that, at least at
17 this time, you didn't yet have access to those State
18 Police reports and Department of Corrections'
19 reports?

20 A. My understanding is that the State was
21 conducting that investigation, and that's why I
22 documented it that way. I don't believe we had
23 obtained those records, or I would have mentioned we
24 already have those documents in our possession.

25 Q. Sure. So it sounds like, at least at this

1 point, you weren't working hand-in-hand with the
2 State Police and the Department of Corrections on the
3 Garza and Castillo murder; is that fair to say?

4 A. I don't believe I ever did. But at this
5 point, I don't know that the FBI was either. I'm not
6 aware of that, because I was not actively involved in
7 the Southern Task Force, sir.

8 Q. Okay. Now, I want to take you down the
9 page to the Matthew Cavalier heading. And in the
10 first sentence there at the second to the third line:
11 Where did this murder occur, according to this
12 report?

13 A. Bernalillo County Detention Center.

14 Q. And then Bobby Ortega is the next one.
15 Does it say in this report that the case is currently
16 being prosecuted by Lea County?

17 A. Yes, sir.

18 Q. And then, on the third page, still talking
19 about Robert --

20 THE COURT: Mr. Benjamin, you're okay,
21 right? You're just looking --

22 MR. BENJAMIN: -- at the monitor, Your
23 Honor.

24 THE COURT: All right. I just didn't want
25 to ignore you.

1 MR. BENJAMIN: Thank you, Your Honor.

2 THE COURT: All right. Mr. Beck.

3 Q. The third page of this report, does that
4 tell you where the murder of Robert Ortega happened?
5 Or maybe that helps refresh your memory where it
6 happened.

7 A. Yes, that helps refresh my memory. I
8 believe it was at the Hobbs Correctional Facility.

9 Q. And is that last sentence in relation to
10 Bobby Ortega, like the Castillo-Garza, does that tell
11 you whether you were joined in that investigation
12 into the Bobby Ortega murder at that time?

13 A. I don't believe it documents the FBI
14 involvement in that matter.

15 Q. Where it says in that last sentence,
16 "Reports need to be obtained from Lea County and
17 Hobbs Correctional Facility," does that indicate to
18 you that you were not participating in that
19 investigation?

20 A. Yes.

21 Q. The next one, Felix Animal Martinez, does
22 that report indicate where that murder happened?

23 A. That was also the Bernalillo County
24 Detention Center.

25 Q. The next one, Ronnie Baca; where did that

1 murder happen?

2 A. Bernalillo County Detention Center.

3 Q. Okay. Now, it looks to me like this
4 report -- Phillip Silva -- it looks to me like this
5 murder happened -- from that first sentence -- after
6 he was released from prison?

7 A. That's my understanding.

8 Q. So this is the first one we've seen so far
9 that did not happen in a prison; is that fair to say?

10 A. Yes, sir.

11 Q. And then, in the last sentence of the
12 investigation into Mr. Silva; does that tell you
13 whether the FBI was joined in this investigation?

14 A. My understanding is we were not, because we
15 still needed to obtain the records. If we were
16 actively involved, I believe we would have already
17 had those records in our possession.

18 Q. The next one, Victor Herrera; does this
19 report indicate to you where Victor Herrera's death
20 occurred?

21 A. Central New Mexico Correctional Facility.

22 Q. I'm going to turn your attention to page 4.
23 I believe this is still in relation to Mr. Herrera's
24 murder. It looks like the first full paragraph on
25 that page refers to Toby Romero. Do you see that?

1 A. Yes, sir.

2 Q. I think you know Toby Romero; is that
3 right?

4 A. Yes, I've met him and interviewed him.

5 Q. Okay. Does this indicate to you whether --
6 at this time, does that second sentence indicate to
7 you at that time whether he was an FBI cooperator?

8 A. I don't believe he was a cooperator at that
9 time.

10 Q. All right. The next murder there: Max
11 Gutierrez, Jr., where did that murder take place?

12 A. I believe that was at the Main Correctional
13 Facility in Santa Fe.

14 Q. So that's another prison murder, right?

15 A. Yes, sir.

16 Q. I'm going to direct your attention to page
17 5: The murder of Michael Fuentes; where did that
18 take place?

19 A. I believe that was also at the Main
20 Facility in Santa Fe.

21 Q. And then the last murder on here: Adam
22 Aragon. It looks like this is the second murder --
23 only the second murder so far -- that did not take
24 place in prison, right?

25 A. That's my understanding.

1 Q. Now, reading through that Adam Aragon
2 sentence, it looks to me like it says that
3 Corrections had obtained a letter from an SNM member
4 which talked about the killing. Do you see that?

5 A. Yes, sir.

6 Q. And it says that -- and it looks to me like
7 FBI intended to get a copy of this letter; is that
8 accurate?

9 A. Yes.

10 Q. So at this time, or at the time of writing
11 this, does that indicate to you whether Corrections
12 and FBI were working hand-in-hand in investigating
13 this murder?

14 A. I believe this document was drafted at the
15 very beginning, when I was just starting to develop a
16 relationship with Corrections. So I don't believe we
17 have that in our possession.

18 Q. Now, the next couple of pages -- and I'm
19 not testing your knowledge on this -- the next couple
20 pages talk about SNM drug traffic activities; is that
21 fair to say?

22 A. Yes.

23 Q. Is it fair to say that this document at
24 least classified the SNM drug trafficking activities
25 as significantly, if not almost solely, within the

1 prison system? And I'll direct your attention to
2 page 5, where it starts talking about SNM drug
3 trafficking activities and the penal system.

4 And then it's not until page 7 till we get
5 to SNM drug trafficking tied to street gangs. Do you
6 see that?

7 A. Yes.

8 Q. And if you need to look through this, you
9 can. But is it fair to say that the tie to street
10 gangs was a tie to street gangs that were providing
11 drugs into the prisons at this time?

12 A. My understanding at the time was that that
13 was a problem. A lot of the drugs that were coming
14 into the SNM came from street gangs or members of
15 street gangs, and that was one of the methods that
16 drugs were being smuggled into the prison.

17 Q. So let me ask you a question generally
18 about this Defendants' Exhibit A proposed
19 investigative plan for the SNM. Is it fair to say
20 that all except for two of the murders mentioned in
21 here -- and the majority, if not all of the drug
22 trafficking crimes -- was directed at things that
23 take place within the prison system only?

24 A. I would say that the majority of the SNM's
25 activities are within the prison system. We

1 considered this a prison gang case, although there
2 were people on the outside. That was the primary
3 focus. Obviously, all entities that large have some
4 extended features. But this was primarily a prison
5 gang case, and activities related to the prisons.

6 MR. BECK: Give me one second here.

7 THE COURT: Certainly.

8 Q. You were asked about Mr. Romero's -- Toby
9 Romero's -- discussions about -- with Smurf, or Leroy
10 Lucero. Do you remember that?

11 A. Yes, sir.

12 Q. Did you follow up and corroborate Mr.
13 Romero's representation to you that Leroy Lucero told
14 him of the plan to kill two inmates inside the
15 Southern New Mexico Correctional Facility?

16 A. I was not actively working that homicide,
17 so I did not -- I don't recall going out and trying
18 to verify that. I did work on verifying other
19 information. For example, Corrections officers that
20 were bringing drugs in, things like that.

21 But that was not one of my investigative
22 things at the time. So I don't believe we ever --
23 myself or the people on our task force -- ever ran
24 that to ground.

25 Q. And following up on that: Again, you said

1 that, I think three out of the four cases that you
2 presented to the U.S. Attorney's Office for
3 prosecution, is it fair to say that they actually
4 involved events outside of the prison system, what I
5 might call on the streets?

6 So let me ask a better question. The
7 Corrections officers that you presented for
8 prosecution, were they confined within the prison, or
9 did they live outside on the streets and then go in
10 to prison for work?

11 A. They lived outside on the streets, and then
12 they would bring drugs in to SNM members in the
13 prisons. Angel Munoz was outside the prison.

14 Q. That was my next question.

15 I want to show you what's been admitted as
16 Defendant's Exhibit I. Does this appear to be a
17 Corrections, or Southern New Mexico Correctional
18 Facility memorandum dated April 12, 2001?

19 A. Yes, sir.

20 Q. And in this report it talks about Source
21 1-A. Is that an FBI source?

22 A. I have no way of knowing if that's an FBI
23 source. I was not involved in this. And it's not a
24 source that I ran, as far as I know, so I don't have
25 any idea who Source 1-A is. I'm sorry.

1 Q. That's fine. Do you think that this is one
2 of the Corrections sources you've talked about, that
3 you didn't have a list --

4 MR. CASTLE: Objection. It calls for
5 speculation. He says he doesn't know anything about
6 this report.

7 THE COURT: Well, let me see what the agent
8 says.

9 MR. BECK: I can ask a better question.

10 THE COURT: All right.

11 Q. At any time you were working on the gang
12 task force investigating the SNM, did you have a list
13 that included a source who was termed or named Source
14 1-A?

15 A. I'm not familiar with the Source 1-A, sir.

16 Q. You opened and numbered sources for the FBI
17 during your time working on the Central New Mexico
18 Violent Organization Task force?

19 A. Yes, sir.

20 Q. And that's not the way that you would open
21 a source, or term a source with the FBI?

22 A. At the time, that number would not
23 accurately reflect an FBI source.

24 Q. During the time that you investigated the
25 SNM, throughout your entire time here in New Mexico

1 or elsewhere, did you have any discussions with the
2 U.S. Attorney's Office about delaying prosecution of
3 the SNM for any crimes to gain a tactical advantage?

4 A. I never have asked anyone to delay a
5 prosecution that I'm aware of. But particularly in
6 this case, there was never a request for any delay.
7 In fact, I pushed to prosecute the Cavalier case.

8 Q. Did you hear anyone ever say anything like
9 that?

10 A. No, sir.

11 MR. BECK: I'll pass the witness.

12 THE COURT: All right. Thank you, Mr.
13 Beck.

14 Mr. Castle. Do you want --

15 MR. CASTLE: Yes, if we could pull up
16 Exhibit A again.

17 REDIRECT EXAMINATION

18 BY MR. CASTLE:

19 Q. Do you have a paper copy with you?

20 A. I believe this is the same document you
21 referred to before.

22 Q. Here it is. This is titled, "Proposed
23 investigative plan for the SNM"; is that right?

24 A. Yes.

25 Q. Whose "Proposed investigative plan"?

1 A. My understanding is there was an executive
2 board that met. They had a discussion. I was
3 instructed by my supervisor, who basically gave me a
4 brief of an outline. And then I fleshed it out. But
5 this was what I was asked to do, or assigned to do.

6 Q. Would it be the FBI's investigative plan?

7 A. Yes, for the task force specifically.

8 Q. Now, it says here, it says, "The following
9 is a list of homicides which have been identified by
10 state and/or local law enforcement agencies as being
11 carried out or ordered by the SNM"; is that right?

12 A. Yes.

13 Q. Then it indicates, "In each of these cases,
14 incident reports and investigative reports need to be
15 obtained from the relevant correctional and/or
16 investigative agencies"; is that right?

17 A. Yes, sir.

18 Q. Part of the investigation was to gather all
19 those reports; is that right?

20 A. That would have been one of the steps, yes.

21 Q. And disciplinary reports were to be
22 obtained?

23 A. Yes.

24 Q. And to your knowledge they were? Do you
25 have any knowledge they weren't obtained?

1 A. My recollection is basic reports were
2 obtained that had gang members' affiliation, and
3 basic things. I don't think it ever got to this
4 extent where we acquired all of these records from
5 different state and local agencies.

6 Q. Also indicates "additional investigative
7 leads or suggestions are set forth for each homicide,
8 where such information has been developed"; is that
9 right?

10 A. Yes.

11 Q. And then it also indicates, "additional
12 leads should be developed"?

13 A. That's correct.

14 Q. Go to the next page.

15 The bottom of the first paragraph, it says,
16 "New Mexico State Police and the Department of
17 Corrections are investigating, and reports should be
18 obtained from these agencies." Do you see that?

19 A. Yes.

20 Q. And was that investigative plan ever
21 abandoned, that goal?

22 A. I was basically assigned, in June, to focus
23 on Central and Northern New Mexico specifically. So
24 if that plan continued to go, it would have been
25 something communicated through a different chain of

1 command to the Southern Task Force. Because I was
2 specifically told to focus on the Central and
3 Northern. I do have a document to that effect, sir.
4 So if that's an abandonment, yes, for our task force.
5 But I can't speak for what the Southern Task Force
6 was assigned to do. I'm sorry.

7 Q. So you have no knowledge of whether the FBI
8 ever abandoned that particular goal?

9 A. This document here was written for our task
10 force. And if you look at the executive committee --
11 I believe I testified earlier that the task forces
12 were independent. This plan was changed at least to
13 that extent, because I was ordered to focus my SNM
14 investigation, as of June, for the Central and
15 Northern prisons and the activities taking place
16 there. This --

17 Q. Agent, let me try to narrow this. You
18 indicated to the attorney for the government that
19 this was a plan for the whole State of New Mexico; is
20 that right? Did you say that?

21 A. I believe I testified earlier that there
22 were two task forces.

23 Q. I understand. But the overall plan was for
24 both, for the State of New Mexico; is that correct?
25 Yes or no?

1 A. This document was derived from a meeting
2 from my management.

3 Q. I'm asking, was this plan for the whole
4 State of New Mexico: Yes or no?

5 A. I'm not aware of what Southern New Mexico's
6 plan was, sir. So for the --

7 Q. That's fine.

8 A. -- for the Central Task Force this was the
9 plan.

10 Q. Let's move on. Robert Ortega -- Bobby
11 Ortega's murder, what part of the state did it occur
12 in, and why is it in this plan?

13 A. Because, initially --

14 Q. Let me break that down, that was two
15 questions. What part of the state is the Bobby
16 Ortega murder?

17 A. Hobbs, New Mexico.

18 Q. Is that the Southern part?

19 A. Yes, sir.

20 Q. And if you could go to the next page. In
21 the plan it says that "Reports need to be obtained
22 from Lea County and the Hobbs Correctional facility,
23 and Aragon needs to be interviewed regarding this
24 homicide. Calderon also needs to be interviewed"; is
25 that right?

1 A. Yes, sir.

2 Q. So these were plans -- it's in your plan,
3 and it involved a murder that happened in the
4 Southern part of New Mexico: Yes or no?

5 A. Yes.

6 Q. And throughout this plan, there are
7 investigative leads that are indicated for the FBI to
8 follow up on?

9 A. Yes, sir.

10 Q. Let's go to the Ronnie Baca murder, a
11 little bit below. In that murder, it even has the
12 FBI -- the plan is the medical records on Chavez and
13 Silva should be checked to verify possible serious
14 illnesses that must have been relevant in that
15 murder; is that right?

16 A. Yes, sir.

17 Q. Then the Phillip Silva murder, which is the
18 next one that's listed, there is an indication in
19 your plan that "reports need to be obtained from the
20 BCSO Homicide Unit regarding this homicide." Do you
21 see that in the last sentence?

22 A. Yes, sir.

23 Q. Now, if we could go to page 5 of this
24 report, at the bottom of the page. You indicate in
25 this plan that "there are a number of valuable

1 resources which the Department of Corrections has
2 agreed to make available for this investigation"; is
3 that correct?

4 A. I'm sorry?

5 Q. Where I put the little red dot. I'm just
6 learning the dot program here.

7 A. Yes, sir.

8 Q. So there was -- the plan was to share
9 resources with the Department of Corrections, at
10 least with regard to drug trafficking?

11 A. Yes.

12 Q. Go to the next page.

13 Do you see where it indicates it would
14 appear that, "The easiest and most productive way to
15 work this part of the investigation would be to
16 capitalize on the resources of the Department of
17 Corrections, and work this part of the investigation
18 jointly with them"?

19 A. Yes, sir.

20 Q. And that happened?

21 A. My understanding is that's why Mr. Costales
22 from probation and parole, was assigned to work with
23 us. And my understanding was probation and parole
24 was a part of the Corrections Department.

25 Q. So you were working jointly with them?

1 A. Yes, sir.

2 Q. Then, if we could go to page 8. Do you see
3 in the second to the last paragraph it says, "It is
4 anticipated, with the concentrated effort, working
5 the SNM through both the prisons, as well as the
6 streets, sufficient information will be obtained
7 regarding a number of prominent SNM members to
8 proceed with a CCE prosecution." That was the plan?

9 A. Yes, sir.

10 Q. Now, there has been some indication that in
11 September of 2001, the bombings derailed at least
12 some of the FBI officers to direct their attention to
13 more important matters?

14 A. At least me personally. And I was the
15 primary case agent for the Central Task Force.

16 Q. Did the task force dissolve?

17 A. It had not dissolved by the time I left.
18 But, again, I was not there very long.

19 Q. Members that were part of -- I think you
20 said probation, state parole that had been deputized
21 as federal agents, did they stop working on the SNM
22 investigation?

23 A. I don't believe they continued to work it
24 heavily without my presence. There were other gangs
25 also being investigated at that time. My review of

1 my investigative file suggests that there was not a
2 lot of additional work done once I left.

3 Q. You said -- you indicated that -- well, you
4 indicated that you had presented the Matthew Cavalier
5 homicide to the U.S. Attorney's Office for
6 prosecution?

7 A. Yes.

8 Q. When did you do that?

9 A. I don't have a specific date. But I
10 believe it probably would have been sometime in that
11 2001, 2002 time period. Because I believe I was off
12 the task force completely by the fall of 2002.
13 Without a specific date, going back 17 years, I'm
14 hesitate to say exactly which date or month, sir.
15 I'm not --

16 Q. So at least your task force continued to do
17 enough work on that homicide to present a case to the
18 U.S. Attorney's Office?

19 A. I believe that work was done by myself,
20 sir.

21 MR. CASTLE: I have no further questions.

22 THE COURT: Thank you, Mr. Castle.

23 Let me see --

24 MR. BECK: I just have a quick --

25 THE COURT: Let me see if any other

1 defendants have anything?

2 MR. BURKE: No, Your Honor.

3 THE COURT: Mr. Burke? Nobody else?

4 All right. Mr. Beck.

5 CROSS-EXAMINATION

6 BY MR. BECK:

7 Q. And I don't think this is within the scope,
8 but in lieu of calling him back, I just have, I
9 think, one question for him.

10 MR. CASTLE: I have no objection, Your
11 Honor.

12 THE COURT: All right.

13 BY MR. BECK:

14 Q. Who were your SNM sources while you were
15 investigating -- your confidential sources while you
16 were investigating the SNM?

17 A. The one I recall specifically was Toby
18 Romero. There were several other SNM members who
19 approached me, who I may have interviewed, or had
20 discussions with. They were never formally converted
21 to be confidential sources. So I did interview a
22 number of other SNM members. For various reasons,
23 they were never made official FBI sources.

24 Q. All right. Other than Mr. Romero, do you
25 remember any other names, sources that you had in

1 2001?

2 A. I believe he was my only FBI SNM source, as
3 far as I can recall.

4 MR. BECK: Thanks.

5 THE COURT: Thank you, Mr. Beck.

6 Mr. Castle, do you have any further
7 redirect?

8 MR. CASTLE: Yes.

9 REDIRECT EXAMINATION

10 BY MR. CASTLE:

11 Q. Agent, do you recall providing two
12 additional reports concerning sources of information
13 that you developed in 2001, when you came here?

14 A. They were not sources. When we term an FBI
15 source, they have to go through a process, and we
16 document them. Those were individuals that asked to
17 talk to me, who were SNM members. And it was a
18 one-time interview. But they were not considered
19 sources.

20 Q. And their names are redacted so that no one
21 can know about them?

22 A. They asked -- they spoke to us in
23 confidentiality. And my understanding is they're not
24 witnesses in this matter.

25 Q. How many SNM witnesses did you interview

1 that you did not classify as a source in the 2001,
2 2002 time period? Just an estimate.

3 A. It would be a guess at best, sir.

4 Q. Multiple? More than two? And less than --

5 A. Less than probably 20.

6 Several times, sir, we would meet with
7 people. But they would want to exchange -- there was
8 kind of a back and forth, so we never fully
9 documented those meetings, because they weren't
10 really willing to cooperate.

11 Q. And that would be you personally?

12 A. Me, personally, yes.

13 Q. Okay. How many sources were developed by
14 your task force, concerning the SNM, during 2001,
15 2002?

16 A. I'm not sure if any other FBI operated
17 sources within the SNM, other than the individuals
18 that I either met with, interviewed, or operated. I
19 was the primary case agent on the SNM, and I don't
20 recall one of the state and local officers running an
21 SNM source.

22 Q. How about SNM witnesses that are not
23 sources, that were interviewed by other members of
24 the task force? Would that be a large number?

25 A. I would -- I honestly don't recall. But it

1 was not a great number. I was involved in most of
2 the investigative steps for the SNM, for that task
3 force.

4 Q. Well, it would be at least enough to
5 prosecute three officers, Angel Munoz, and at least
6 to present the Cavalier murder to the U.S. Attorney's
7 Office?

8 A. A lot of that information came from Mr.
9 Romero, as far as the corrections officers, and some
10 of those other individuals, sir.

11 THE COURT: Is that it, Mr. Castle?

12 MR. CASTLE: Yes, Your Honor.

13 THE COURT: Anybody else? Let me see if
14 anybody else has got anything following your
15 questions. Anything further?

16 All right. Mr. Beck.

17 MR. BECK: Nothing further. He may be
18 excused.

19 THE COURT: All right. Is it all right if
20 he be excused, Mr. Castle?

21 MR. CASTLE: Yes, Your Honor.

22 THE COURT: All right. Anybody have any
23 objection? All right. Mr. Pedersen, you may step
24 down. And you may be also excused from the
25 proceedings. Thank you for your testimony.

1 THE WITNESS: Thank you.

2 MR. CASTLE: Your Honor, the next witness
3 is in regards to the statements issue, and it's a
4 person we have to get on their way. It's an
5 individual by the name of James Garcia.

6 THE COURT: All right. Do you want to
7 direct me to the statement again? Where this is?

8 MR. CASTLE: Yes, Your Honor. It's motion
9 number 1909.

10 MR. BECK: Your Honor, may we approach?

11 THE COURT: All right.

12 (The following proceedings were held at the
13 bench.)

14 MR. BECK: I just want to get a feel for
15 all of us being up here together.

16 THE COURT: You miss it?

17 MS. ARMIJO: It's different from this side.

18 THE COURT: Short-lived.

19 MR. BECK: Our understanding is that if
20 this is who we think it is, James Garcia, he is on
21 federal probation, so likely would need an attorney
22 assigned to him, based on what he's going to say.

23 MR. CASTLE: Your Honor, we've asked him.
24 He doesn't have an attorney. He's not requesting an
25 attorney. We're only going to be asking him about

1 statements that he has indicated in the past that
2 Mr. Troup made at a barbecue some time in the past.
3 He's not involved in these homicides whatsoever. We
4 made inquiry of him about the attorney issue, because
5 of all the other witnesses.

6 THE COURT: Is he in custody?

7 MR. CASTLE: No, he's living in the
8 community.

9 THE COURT: Well --

10 MR. CASTLE: And I would say, if I could,
11 the Government has never required an attorney be
12 present when they questioned him whatsoever. They
13 never required that.

14 THE COURT: Well, is there something he's
15 about to say that you think you might prosecute him
16 for, if there is a violation of his probation or
17 otherwise?

18 MR. BECK: That, I don't know. I think the
19 possibility is there. And so I think it would be --

20 THE COURT: What do you think he's going to
21 say?

22 MR. BECK: I think he's going to testify
23 about statements he got from the defendants in this
24 room about the Garza and Castillo murders.

25 THE COURT: While he's been on pretrial

1 release -- while he's been on supervised release?

2 I'll get it right.

3 MR. BECK: I don't have the documents in
4 front of me, but I would think so, given my knowledge
5 of the case.

6 THE COURT: So he's hanging around with
7 felons, is that --

8 MR. CASTLE: This would have been a
9 previous time that he was released -- not this
10 time -- so this would have been a number of years
11 ago, six years ago, at a barbecue. Not during this
12 time of supervised release whatsoever. So we're not
13 going to ask him about anything that's happened
14 during his supervised release this time.

15 THE COURT: What do you think?

16 MR. BECK: I think, given my knowledge, I
17 would feel more comfortable if he has an attorney. I
18 don't know that he will be invoking his Fifth in
19 response to those questions. I understand they're
20 limited, but I think it's --

21 THE COURT: Is he local? Is he a Las
22 Cruces person?

23 MS. HARBOUR-VALDEZ: Albuquerque, Your
24 Honor.

25 MR. CASTLE: He's from Albuquerque. And

1 Judge, I have 13 questions. And my fear is when a
2 party tries to get a lawyer for a witness who hasn't
3 asked for one, has no demonstrated need for one, that
4 that will act as an impediment for the person to
5 testify.

6 THE COURT: Well, yeah, the Government has
7 always threatened the witnesses. That's hard ball.
8 That's the reason I've got to protect them.

9 MR. CASTLE: We're not protecting them from
10 the Government.

11 THE COURT: Well, we are.

12 MR. CASTLE: Seems like when the attorneys
13 get appointed, they protect them from the defense.
14 That's what's actually happened here.

15 THE COURT: Well, I understand the logic.

16 MR. CASTLE: I don't think there is any
17 Fifth Amendment issue here. I think it will scare
18 him. And we're entitled to the evidence.

19 THE COURT: I've got to protect him. If
20 the Government thinks they might do something, I've
21 got to protect him. Let me see if I can rustle up a
22 lawyer for him while he's here. I'm running on fumes
23 as far as attorneys. But let me see.

24 MR. CASTLE: Your Honor, if the Court is
25 going to do that, what I would ask, between now and

1 when he does testify, that he not be contacted by any
2 of the parties, either through his attorney or not.
3 I don't want this as an opportunity for the
4 Government to try to wrestle a different statement
5 out of him than what he has been telling us today and
6 previous days. I really think -- I hate to try to
7 impugn anybody's motives here, but the past in this
8 case has shown they get lawyers for the defendant,
9 they negotiate -- I'm sorry, for witnesses -- they
10 negotiate a statement in return for a threat of
11 prosecution. I don't think that's what this is
12 intended for.

13 If the Court has only appointed counsel to
14 advise him, and that's what the continuance -- the
15 time that's necessary to do, just to give him advice,
16 not for the Government to try to negotiate an
17 alternate story to be put on the stand here.

18 THE COURT: Can you agree to that?

19 MR. BECK: No, Your Honor. I mean, I think
20 we want him to testify. So if he's being appointed
21 an attorney, we'd have to talk to that attorney about
22 securing his testimony. So I can't agree to that.
23 I'm not going to wrestle a story out of him.

24 THE COURT: I'm not going to force an
25 attorney on him. Let me speak to him here. So why

1 don't you have your paralegal bring him inside the
2 door and let me speak to him.

3 MR. CASTLE: Mr. Garcia is on the witness
4 list, and has been for some time. They've never had
5 a need to get him an attorney during that time period
6 whatsoever. It's only when the defense wants to call
7 him as a witness that they now think he needs to be
8 protected by lawyer. That speaks of what's going on
9 here.

10 MS. ARMIJO: Your Honor, this is why he
11 needs an attorney. This is why we have not debriefed
12 him. He does need a lawyer. He is on the witness
13 list. We are planning on probably getting him an
14 attorney at some point here. But there is the Sammy
15 Chavez murder; we heard about it in the first trial.
16 It's the one that they said that Billy Cordova was
17 somewhat involved in. It happened on the streets.
18 Arturo Garcia is charged with that as an Overt Act in
19 the RICO case that we have. And it's also part of
20 our bad acts that we've listed for him. He's a
21 suspect in that murder.

22 And so, you know, regardless of his
23 statements or anything else, and depending on what he
24 says -- we don't know what he's going to say. At
25 times he's cooperating, at times he's not cooperating

1 with the Government. He's a suspect in the murder
2 that Arturo Garcia is directly related to as calling,
3 and so he does need an attorney. And depending on
4 what he says, we will be able to impeach him
5 potentially with statements that he's given about a
6 murder case that he's a suspect in, so that's why he
7 needs an attorney, Your Honor.

8 MR. BURKE: Your Honor, I think that's a
9 good point. And I think the testimony should steer
10 clear of the Sammy Chavez homicide for that reason.

11 MR. BECK: So do I. I don't know what he's
12 going to say.

13 THE COURT: If we take that out, does the
14 Government still think he needs an attorney, if we
15 take the Sammy Chavez homicide out?

16 MR. BECK: I do, Your Honor. I think he's
17 a target. And I think things he says on the stand
18 now could hurt him later on. And so I can't say -- I
19 mean, I know my obligations, and I can't say that I
20 think it's a good idea that he proceed without a
21 lawyer on these questions.

22 MR. CASTLE: They're saying he's a target.
23 There wasn't a single person named as a
24 co-conspirator in the homicides. Who has a list of
25 each one of them? James Garcia will not --

1 THE COURT: But Sammy Chavez.

2 MS. ARMIJO: That's in the RICO case.

3 MR. CASTLE: Oh, it's the RICO case.

4 MR. BURKE: 2008 homicide that is mentioned
5 in the RICO. We would steer clear of that on the
6 direct examination.

7 THE COURT: I think it's more prudent for
8 me to get an attorney rather than rush anything. Let
9 me have him step inside and see what he wants to do.
10 I can't force an attorney.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: Mr. Garcia, why don't you come
14 up here to the bench, if you don't mind. If you'll
15 come up and stand right here, I'm going to talk to
16 you for a second.

17 (The following proceedings were held at the
18 bench.)

19 THE COURT: How are you doing, Mr. Garcia?

20 WITNESS GARCIA: All right.

21 THE COURT: Glad to be here?

22 WITNESS GARCIA: Not really.

23 THE COURT: I understand.

24 Here's the situation: Mr. Castle, who
25 represents Mr. Garcia, is wanting to -- Billy

1 Garcia -- is wanting to question you. He says he's
2 got 13 questions, I don't know what the questions
3 are, but there may be some further examination by the
4 defense lawyers, and the Government gets a chance to
5 cross-examine. So you've got some questions. I
6 don't know what the length of them are. After
7 listening to some of the statements that the
8 attorneys have made to me, it's my thought that you
9 need to have an attorney appointed to advise you
10 about some of these questions, or at least advise you
11 of issues that may come up. I'm not going to force
12 an attorney on you, but it's my judgment that I ought
13 to get you one before you start testifying.

14 Do you want me to try to get you one?

15 WITNESS GARCIA: Yeah, if I need one, yeah.

16 THE COURT: I can't tell you for certain
17 you need one. But it's my judgment that it would be
18 prudent to get you one before you got on the stand
19 and started testifying. So do you want me to try to
20 rustle up a lawyer to represent you?

21 WITNESS GARCIA: Yeah, I guess, sure. I
22 don't know what this is about.

23 THE COURT: All right. Why don't you step
24 out of the courtroom, and I'll try to make a call
25 here and see if we can find an attorney for you.

1 WITNESS GARCIA: I have a question, sir: I
2 was told I was just going to come up here on
3 testimony that I gave were a lie, you know what I
4 mean? I was trying to make a deal with the FBI.

5 THE COURT: Why don't you not say too much.
6 Why don't you not tell me too much. Why don't you
7 step outside of the courtroom. Let me make a call.
8 I don't know what I can do at the present time. But
9 let me see what I can do, okay? All right. Why
10 don't you stay up here and make a call and see if I
11 can get --

12 MR. BECK: And, Your Honor, I would say
13 based on what I heard right there, he definitely
14 should be represented by an attorney.

15 THE COURT: Well, I'm concerned.

16 MS. ARMIJO: And, Your Honor, the other
17 thing, I know the defense doesn't want -- but the
18 attorney should have the RICO indictment and overt
19 acts. And there is a phone call. That's why he's a
20 suspect, there is a phone call.

21 THE COURT: The Baca indictment?

22 MS. ARMIJO: Yes. And there is a phone
23 call that he -- I'm pretty certain he's a suspect in
24 that incident. So I think that the attorney should
25 at least be made aware of the allegations.

1 MS. HARBOUR-VALDEZ: And that he met with
2 your agents last year and took his DNA.

3 MS. ARMIJO: Absolutely.

4 MS. HARBOUR-VALDEZ: There was a search
5 warrant. They took his DNA.

6 MR. BURKE: But that issue is not going to
7 come up in this examination.

8 MS. HARBOUR-VALDEZ: It has nothing to do
9 with our case.

10 MR. CASTLE: If counsel advises him on
11 this -- and I think what's likely to happen is that
12 there are going to be questions that may bring up a
13 Fifth Amendment invocation. Other questions which
14 won't involve what was said at a barbecue eight years
15 ago about something he wasn't involved in is
16 unlikely.

17 THE COURT: I think you've seen me over the
18 last few months. I don't allow any sort of blanket
19 assertions. I take them one at a time. And I think
20 we've gotten for the most part most of the evidence
21 out. There has been times where a question was going
22 to clearly incriminate the person. But let me make a
23 call. If I can't get something done here, then we
24 may have to move on a little bit. Let me see if I
25 can get someone.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: His first name is James, right?

4 MS. ARMIJO: Yes, Your Honor.

5 (A discussion was held off the record.)

6 THE COURT: All right. So we'll work on
7 that. As you know, I'm on fumes as far as finding
8 lawyers. So let me see what I can do. But we're
9 working on it at the present time.

10 All right. So what do we go to next?

11 MR. BECK: Your Honor, the United States
12 has a witness for the motions to dismiss that would
13 be out of the order, but he's been here all day and
14 he'll be short.

15 MR. CASTLE: Your Honor, we're going to
16 call a different witness, Dwayne Santistevan. He was
17 a witness in the first trial.

18 THE COURT: Are you comfortable with this?

19 MR. BECK: Comfortable? I know
20 Mr. Santistevan doesn't want to be up here, but he's
21 got a subpoena.

22 THE COURT: Are you comfortable with
23 calling --

24 MR. BECK: Him going in front of my person,
25 I'm comfortable with that, yes, thank you.

1 MR. CASTLE: I'm sorry, I talked off the
2 record with him, and didn't mention it.

3 THE COURT: All right. Mr. Santistevan, if
4 you'll come up and stand next to the witness box on
5 my right, your left. Before you're seated, Ms. Bevel
6 will swear you in.

7 DWAYNE SANTISTEVAN,
8 after having been first duly sworn under oath,
9 was questioned and testified as follows:

10 DIRECT EXAMINATION

11 THE CLERK: State your name and spell your
12 last name for the record, please.

13 THE WITNESS: My name is Dwayne
14 Santistevan, S-A-N-T-I-S-T-E-V-A-N.

15 THE COURT: Mr. Santistevan. Mr. Castle.
16 BY MR. CASTLE:

17 Q. Mr. Santistevan, in 2004, in June of 2004,
18 where were you employed?

19 A. I was employed by the New Mexico
20 Corrections Department at the Central New Mexico
21 Correctional Facility.

22 Q. Do you recall, prior to 2004, all the way
23 back to 2001, there being a pair of murders that had
24 happened in Southern New Mexico Correctional
25 Facility?

1 A. Mr. Castle, with all due respect to you,
2 Your Honor, the rest of the court, I was a victim. I
3 testified here last month as a victim, okay? I'm
4 still a victim. And I don't feel comfortable
5 answering any questions about any homicide that
6 occurred in 2001.

7 THE COURT: Mr. Santistevan, you have to
8 answer the question.

9 A. Ask again, please.

10 Q. Were you generally aware that two inmates
11 had died on the same day at Southern New Mexico
12 Correctional Facility in 2001?

13 A. I was aware.

14 Q. I want to bring you back to 2004. Do you
15 recall -- well, what was your capacity? How were you
16 working in 2004? Were you part of an intelligence
17 unit?

18 THE WITNESS: Do I have to answer that as
19 well, Your Honor?

20 THE COURT: You do.

21 A. I was Security Threat Intelligence Unit
22 Coordinator at the Central New Mexico Correctional
23 Facility.

24 Q. And in that position at times would you
25 interview inmates who wanted to be confidential

1 informants?

2 A. Yes.

3 Q. Do you recall -- actually, let me show you
4 a document. I'll show you what's been admitted as
5 Exhibit J. Does that appear to be a memorandum that
6 you authored dated June 4, 2004?

7 A. Yes.

8 Q. If we could scroll to page 2. Do you see
9 that there is an informant that's labeled "DFS #3"?

10 A. Yes.

11 Q. And is "DFS" your initials?

12 A. Yes.

13 Q. At that time, was it policy that when you
14 were having an informant, you would use your initials
15 and then you'd give a number to the informant?

16 A. Yes.

17 Q. And that was so that their identity
18 wouldn't be disclosed?

19 A. It was an identifying number, yes.

20 Q. See the black area next to it that's
21 redacted?

22 A. Yes.

23 Q. Would that normally have contained the name
24 of the informant, or what would be in that area that
25 would be blacked out?

1 A. It would be the informant number.

2 Q. It would be an informant number in addition
3 to "DFS #3"?

4 A. Yes.

5 Q. This particular informant, it looks like
6 you interviewed on June 1st at 9:35 in the morning of
7 2004; is that right?

8 A. Yes.

9 Q. Did he provide information to you about the
10 2001 murders at Southern New Mexico Correctional
11 Facility?

12 A. The only information that I see that this
13 informant provided me with is that Inmate Leroy
14 Lucero was telling inmates that they better get ready
15 because the SNM was about to clean house, and that
16 Billy Garcia had ordered the hits.

17 Q. Okay. So let's talk about the two parts of
18 that. The first part is the CI telling you he
19 "overheard Leroy Lucero telling inmates in the
20 compound they better get ready because the SNM was
21 going to clean house, and the place was going to be
22 locked down"; is that right?

23 A. That's what it reads, yes.

24 Q. The second part is that he overheard
25 someone else say that "Billy Garcia had ordered the

1 hits"; is that right?

2 A. That's what it reads, yes.

3 Q. He's not saying that he talked to Billy
4 Garcia or anything like that?

5 A. Not from what I can read.

6 Q. Now, has anyone from the FBI talked to you
7 about the identity of DFS #3?

8 A. No.

9 Q. When you gave this report, where would it
10 go? Did it go to the --

11 A. If you look at the first page, it went to
12 my then supervisor, Lawrence Jaramillo.

13 Q. And he was the head of the STIU?

14 A. Yes.

15 Q. And to your knowledge, in 2004, was he
16 working on a gang task force with the FBI and other
17 agencies?

18 A. Not that I can remember.

19 Q. So when you say that, are you saying you
20 don't think he did, or that you just don't remember
21 one way or the other?

22 A. I don't remember one way or the other.

23 Q. Well, when you gave that information to --
24 well, strike that.

25 Would you keep a separate file where you

1 would write down the actual names that are associated
2 with the informant identifier?

3 A. What we would do back then -- and I think
4 they still do it -- is we would keep a log, our own
5 individual logs with our CI numbers for future
6 reference.

7 I've since retired from the Corrections
8 Department. All that documentation, that log, stayed
9 with the Corrections Department.

10 Q. So you never threw out the logs that you
11 had on informants that you had questioned?

12 A. No.

13 Q. And when would you have turned that over?

14 A. Upon my retirement.

15 Q. Can you give us a year?

16 A. February of 2016.

17 Q. So prior to February of 2016, no agent from
18 the FBI, or individual on behalf of the United States
19 Attorney's Office, contacted you to find out the
20 identities of any informants that you had interviewed
21 that might have information relevant to the 2001
22 murders?

23 A. I haven't seen this document or talked to
24 anybody else about this document till last week.

25 Q. Do you recall who DFS #3 is?

1 A. I do not.

2 Q. So when you gave over your log -- I take it
3 the log would have the name of the inmate and then a
4 number; is that right?

5 A. It had the number, then the name of the
6 inmate, and the date the information was received.

7 Q. So if we were to look at that and then --
8 look at the log and this document, we'd be able to
9 identify who DFS #3 is?

10 A. Yes.

11 Q. And the reason you do that is because you
12 don't have to remember years and years later who DFS
13 #3 is?

14 A. Correct. And plus, you'd just be
15 compromising the safety of your source.

16 Q. Would you have been the one that redacted
17 the information next to the DFS #3, or is that some
18 other entity that would have redacted that?

19 A. That would have been somebody else.

20 MR. CASTLE: I have no further questions.

21 THE COURT: Thank you, Mr. Castle. Any
22 other defendant have any questions of
23 Mr. Santistevan? All right. Not hearing any.

24 Mr. Beck, do you have cross-examination of
25 Mr. Santistevan?

1 MR. BECK: Yes, Your Honor.

2 THE COURT: Mr. Beck.

3 CROSS-EXAMINATION

4 BY MR. BECK:

5 Q. Good afternoon, Mr. Santistevan.

6 A. Good afternoon.

7 Q. I just want to talk to you briefly about
8 this statement from Source DFS #3. Where it says in
9 the second sentence, "The CI stated to me that three,
10 four days prior to the killing, Smurf Leroy Lucero
11 was telling inmates on the compound that they better
12 get ready because the SNM was going to clean house
13 and the place was going to be locked down." Does
14 that indicate to you that someone in the SNM, other
15 than Leroy Lucero, was going to clean house?

16 A. Could have been the whole group.

17 Q. Do you think if he said Leroy Lucero said
18 "I, Leroy Lucero," was going to clean house that you
19 would have written Leroy Lucero was going to clean
20 house rather than the SNM?

21 A. Yes.

22 Q. And then when he says "He further
23 stated" -- this last sentence you went over with Mr.
24 Castle -- "He further stated that he had heard that
25 Billy Garcia had ordered the hits on the two inmates

1 that were killed," it doesn't say one way or the
2 other whether he heard that from Billy Garcia, does
3 it?

4 A. It doesn't.

5 Q. And do you know that just days before -- I
6 know it says three or four days on this -- but do you
7 know that just days before Castillo and Garza were
8 killed at the Southern New Mexico Correctional
9 Facility, Billy Garcia arrived there? Do you know
10 that?

11 A. I don't know that. I don't know when he
12 arrived at the facility.

13 MR. BECK: All right. Nothing further,
14 Your Honor.

15 THE COURT: All right. Thank you, Mr.
16 Beck.

17 Mr. Castle, do you have redirect?

18 MR. CASTLE: Yes.

19 REDIRECT EXAMINATION

20 BY MR. CASTLE:

21 Q. If this informant had said to you that
22 Billy Garcia had confessed to killing the two people,
23 would you have written that in your report?

24 A. All the information that that informant
25 gave me at the time was what I put on that report.

1 And had that informant told me that, yes, I would
2 have put it on the report.

3 Q. And I take it, then, you would have
4 probably asked some follow-up questions from that
5 informant: Where did he confess to you, what the
6 details of the confession were, and things of that
7 nature?

8 A. I would have gone deeper into the
9 interview, yes.

10 Q. And you would have put that in your report?

11 A. Yes.

12 MR. CASTLE: Nothing further.

13 THE COURT: Thank you, Mr. Castle.

14 Anybody else have redirect of
15 Mr. Santistevan? All right. Mr. Granberg.

16 REDIRECT EXAMINATION

17 BY MR. GRANBERG:

18 Q. Mr. Santistevan, had Mr. Lucero stated to
19 you that Mr. Chavez was in any way related to the
20 murder, you would have put that in the report;
21 correct?

22 A. I'm sorry?

23 Q. If Mr. Lucero had stated to you that
24 Christopher Chavez was in any way related to the
25 murders in 2001, of Rolando Garza, you would have put

1 that in your report?

2 A. Yes.

3 Q. And it wasn't there?

4 A. No, sir.

5 MR. GRANBERG: Pass the witness.

6 THE COURT: Thank you, Mr. Granberg. Any
7 other defendant have redirect?

8 All right. Mr. Santistevan, you may step
9 down. Is there any reason that Mr. Santistevan
10 cannot be excused? Mr. Castle?

11 MR. CASTLE: No, Your Honor.

12 THE COURT: Anyone else from the
13 defendants? Mr. Beck?

14 MR. BECK: No, Your Honor.

15 THE COURT: All right. You're excused from
16 the proceedings. Thank you for your testimony.

17 All right. Do you want to get, Mr. Beck,
18 your witness on this afternoon?

19 MR. BECK: Yeah, if that's all right. The
20 United States would call James Pedraza.

21 THE COURT: Would you give me that name
22 again, Mr. Beck.

23 MR. BECK: Sure. James Pedraza.

24 THE COURT: Mr. Pedraza, if you'll come up
25 and stand next to the witness box on my right, your

1 left. Before you're seated, my courtroom deputy, Ms.
2 Bevel, will swear you in.

3 JAMES PEDRAZA,
4 after having been first duly sworn under oath,
5 was questioned and testified as follows:

6 DIRECT EXAMINATION

7 THE CLERK: Please be seated. Would you
8 state your name and spell your last name for the
9 record?

10 THE WITNESS: James Pedraza, P-E-D-R-A-Z-A.

11 THE COURT: Mr. Pedraza. Mr. Beck.

12 BY MR. BECK:

13 Q. Mr. Pedraza, how are you employed?

14 A. I'm a correctional officer for the State of
15 New Mexico.

16 Q. And where are you employed as a
17 correctional officer?

18 A. Here at Southern New Mexico, outside of
19 Cruces.

20 Q. Is that the Southern New Mexico
21 Correctional Facility?

22 A. Yes.

23 Q. In March of 2001, were you a correctional
24 officer at the Southern New Mexico Correctional
25 Facility?

1 THE COURT: Mr. Beck, before you start,
2 could you tell me what his testimony -- which motion
3 it relates to?

4 MR. BECK: Sorry, Your Honor. Yes. So
5 this is in relation to both Mr. Garcia's and Mr. --

6 THE COURT: The motions to dismiss?

7 MR. BECK: Yes.

8 THE COURT: Sorry, Mr. Beck.

9 MR. BECK: No, not at all.

10 Q. So in March of 2001, were you employed at
11 SNMCF as a correctional officer?

12 A. Yes, I was.

13 Q. Were you working on the night of March 25
14 into March 26 of 2001?

15 A. Yes, I was.

16 Q. And where were you working, if you
17 remember?

18 A. At that time, the housing unit that I was
19 working in was designated as Paul 1.

20 Q. And what were you doing that evening in the
21 housing unit of Paul 1?

22 A. I was the control officer.

23 Q. And what time were you working as control
24 officer?

25 A. From 10:00 p.m. to 6:00 a.m.

1 Q. And did you learn at some point the next
2 day -- the next day, on March 26 of 2001, after you
3 left work, were you called back in?

4 A. Yes. Obviously, I was working graveyard.
5 I didn't have to work overtime, so I got off at 6:00
6 a.m., and got home usually by 7:00 in the morning.
7 I'd go to bed. So I received a call probably between
8 9:30, 9:45 from a sergeant at the facility stating
9 that the Warden wanted me to come in in full uniform.
10 He didn't say why. He just said to come in.

11 Q. What happened when you returned to the
12 Southern New Mexico Correctional Facility on March
13 26?

14 A. I was at the lobby, and I was trying to
15 find out what was going on. And some of the staff
16 was saying that some inmates had been shanked.

17 Q. Did you learn that an inmate in the Paul 1
18 unit had been shanked, stabbed, and killed?

19 A. I eventually found out that he was
20 strangled.

21 Q. Strangled. Oh, thank you. You're right
22 about that.

23 And I think you said the overnight, during
24 the graveyard, you had been the control officer?

25 A. Yes.

1 Q. What are your duties as the control
2 officer?

3 A. I operate the controls, to let people in
4 and out, the cell doors. I keep a log of the
5 activities in the unit I. Keep an eye on my rover.
6 The rover is the officer that actually does the round
7 in the pods.

8 Q. I want to talk to you about the log in your
9 unit. Is that also referred to by some as the daily
10 log?

11 A. Yes.

12 Q. What sorts of activities do you log in the
13 daily log?

14 A. Major activities, such as count time, when
15 they're released to go to breakfast, when they go to
16 recreation, education. Whenever an inmate goes into
17 that unit assigned, I'll log it down. Or whenever an
18 inmate leaves, I make note of that.

19 Q. It sounds like you do not log -- and tell
20 me if I'm wrong. Let me ask the question this way,
21 and it may be easier: Do you log every movement an
22 inmate makes in Paul 1 unit in your daily logs?

23 A. No.

24 Q. Do you log in your daily logs if inmates
25 are playing cards at the table in the main area?

1 A. No.

2 Q. Do you log in your daily logs if one inmate
3 goes into another inmate's cell or room?

4 A. No.

5 Q. On March 26, did you go back and check --
6 or sometime close in time to March 26, did you go
7 back and check the daily logs from the night of March
8 25 in Paul 1 unit, if you remember?

9 A. What do you mean if I checked?

10 Q. At some point did you go back and check
11 your daily logs for any irregular activity that you
12 had noted inside the cell, inside the pod, if you
13 remember?

14 A. I don't remember any unusual activity. The
15 only thing that I remember during that weekend was
16 that the mood of the facility was very odd, the way
17 the inmates were behaving. They weren't social, the
18 way they normally would be. They were like more
19 serious, not as social.

20 MR. BECK: No further questions, Your
21 Honor.

22 THE COURT: All right. Thank you, Mr.
23 Beck. Any defendant have cross-examination of Mr.
24 Pedraza? Mr. Benjamin?

25 MR. BENJAMIN: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BENJAMIN:

3 Q. The daily logs would show an inmate leaving
4 the pod to go to work; correct?

5 A. Correct.

6 Q. Okay. And that would show his name and,
7 essentially, the time that he left?

8 A. Yes.

9 Q. And the time that he came back?

10 A. Yes.

11 Q. Okay. And to the extent that -- have you
12 ever worked in the kitchen area or been familiar with
13 the kitchen area?

14 A. A few times.

15 Q. Okay. Are you aware if they have the same
16 type of log, where they log somebody coming into the
17 kitchen and then, essentially, leaving work at the
18 kitchen?

19 A. I believe so.

20 MR. BENJAMIN: Okay. Pass the witness,
21 Your Honor.22 THE COURT: Thank you, Mr. Benjamin. Any
23 other defendant? Mr. Castle?

1 CROSS-EXAMINATION

2 BY MR. CASTLE:

3 Q. Did you get to know the individual who was
4 murdered in that pod when you were working there?

5 A. You're talking about Castillo?

6 Q. Yes.

7 A. I vaguely remember him.

8 Q. Was he acting nervous in those two days?
9 Was he one of the people you saw being extremely
10 quiet, et cetera?11 A. I don't recall anything unusual. But like
12 I said earlier, the mood within the whole compound,
13 the facility, was just very different. Normally,
14 when they'd be released to chow, they'd be talking to
15 each other, waving, or whatnot. And that weekend
16 everybody was like very serious.17 Q. Did you see anyone that Mr. Castillo had
18 kind of a problem with, or at least you observed
19 problems with?

20 A. Not that I recall.

21 Q. Did you know an inmate by the name of Leroy
22 Lucero?

23 A. I don't remember.

24 Q. Was that pod that you were working in, was
25 that an SNM pod?

1 A. At that time, the SNMers were scattered
2 throughout the facility. They were within general
3 population, so they were everywhere at that time.

4 Q. What does it mean to you, as a corrections
5 officer, when the inmates are unusually quiet and,
6 you know, that mood that you saw there? What does
7 that mean to you?

8 A. For me personally?

9 Q. Yes.

10 A. I felt that something was going to happen,
11 but I didn't know what or when.

12 Q. As a corrections officer, I take it you get
13 in tune with the moods of the inmates, and where it
14 might cause danger to either yourself or the inmates?

15 A. Yes.

16 Q. So that kind of atmosphere was going on in
17 the two days before his murder?

18 A. Yes.

19 Q. Do you note on your logs when an unusual
20 number of inmates gather in a particular cell, or
21 what you would consider an unusual number?

22 A. By policy they're not allowed to congregate
23 in the cell. So if we see them starting to visit,
24 we'd give them a directive right away to get out.
25 But we would make a note of it.

1 Q. So you're not even allowed to have a single
2 inmate that doesn't belong in your cell in your cell?

3 A. No.

4 Q. What is pod hopping? Are you familiar with
5 that term?

6 A. I haven't heard it before.

7 Q. Is it against regulations for an inmate to
8 go to a pod in which he doesn't live, unless he's a
9 porter or something like that?

10 A. Even if you're a porter, if they're not
11 assigned to that pod, they're not allowed in there.

12 Q. Does that happen, though, where someone
13 comes in to a different pod that they don't belong
14 in?

15 A. It depends on the officer in charge. Me,
16 personally, I wouldn't allow it; I wouldn't allow
17 them to visit another pod.

18 Q. So in the day before the murders, did you
19 see any unusual number of people going into Mr.
20 Castillo's cell?

21 A. Not that I recall.

22 Q. And if a number of inmates would have
23 entered his cell within a few seconds, is that when
24 you would intercede and tell them to disperse?

25 A. Yes.

1 Q. And that's policy?

2 A. Yes.

3 MR. CASTLE: I have no other questions.

4 THE COURT: Thank you, Mr. Castle. Any
5 other defendants have cross-examination of Mr.
6 Pedraza?

7 All right. Mr. Beck, do you have redirect
8 of Mr. Pedraza?

9 MR. BECK: Nothing further.

10 THE COURT: All right. Is there any reason
11 that Mr. Pedraza cannot be excused from the
12 proceedings? Mr. Beck?

13 MR. BECK: Not from the Government, Your
14 Honor.

15 THE COURT: Any other defendant have any
16 objection to excusing him? Not seeing or hearing
17 any, Mr. Pedraza, you may step down. Thank you for
18 your testimony. You are excused from the
19 proceedings.

20 THE WITNESS: Thank you.

21 THE COURT: All right. We got -- I may
22 have an attorney coming over, so if somebody wants to
23 put a little packet together -- I'm going to take a
24 break here pretty quick -- if somebody wants to put a
25 packet together so that Mr. Garcia's counsel -- I

1 can't promise it, but can look at it, and sort of be
2 briefed on what the issues are.

3 MS. HARBOUR-VALDEZ: May I speak to the
4 Government about that?

5 THE COURT: Okay. What do we have next?
6 If we can squeeze Mr. Garcia in this afternoon, but
7 it will be after the break -- do you have something,
8 Mr. Benjamin, you were going to address?

9 MR. BENJAMIN: No, Your Honor.

10 THE COURT: Okay. Does the Government have
11 anything else it needs to squeeze in this afternoon?
12 Do we go back to arguing, or where do we go?

13 MR. BECK: We don't have any additional
14 evidence that I can think of for this motion.

15 THE COURT: How about you, Mr. Castle?

16 MR. CASTLE: We have a witness, Warden
17 Tafoya, and Corrections Officer Juan Barela.

18 THE COURT: Okay. Tafoya is a what, a who?

19 MR. CASTLE: Well, they're both witnesses
20 for the motion to dismiss.

21 THE COURT: Are they both corrections
22 officers?

23 MR. CASTLE: One was a former warden and
24 one was a corrections officer.

25 THE COURT: All right. So do you want to

1 call one of them? We can go ahead and take a break,
2 and call one of them right after the break. We'll
3 see if we get an attorney over here. I had something
4 else to tell you. I can't think what it is. Why
5 don't we take our break and come back in about 15
6 minutes, and we'll see where we are.

7 (The Court stood in recess.)

8 THE COURT: Let's go on the record. I've
9 got Cody Rogers walking over. She's in jeans, but
10 I've sanctioned the attire, so she'll be here in a
11 little bit. And so I don't know if I would recognize
12 Ms. Rogers. So when she walks in, if somebody does,
13 if y'all give her whatever packet or information you
14 have.

15 Shall we take up one of your next
16 witnesses, Mr. Castle, while we're waiting for
17 Ms. Rogers to get over here?

18 MR. CASTLE: Yes. It would be Lawrence
19 Tafoya.

20 THE COURT: Mr. Tafoya, if you'll come up
21 and stand next to the witness box on my right, your
22 left. Before you're seated, Ms. Bevel, my courtroom
23 deputy, will swear you in.

1 LAWRENCE TAFOYA,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. Would you
6 state your name and spell your last name for the
7 record.

8 THE WITNESS: My name is Lawrence Tafoya.
9 T-A-F-O-Y-A.

10 THE COURT: Mr. Tafoya. Mr. Castle.

11 BY MR. CASTLE:

12 Q. Mr. Tafoya, how were you employed in 2001?

13 A. I was the Warden at Southern New Mexico
14 Correctional Facility.

15 Q. On March 26 of 2001, were there two murders
16 in that facility?

17 A. There were.

18 Q. In the days after those murders, did you
19 and others attempt to try to figure out what had
20 happened?

21 A. Would you repeat that, please?

22 Q. Did you and others that worked at that
23 facility try to figure out what had happened?

24 A. Yes, with the assistance of other law
25 enforcement agencies.

1 Q. During that time, did you personally
2 interview inmates regarding what happened?

3 A. I believe I did interview at least a couple
4 of them.

5 Q. And if I showed you a report that you
6 authored, would that refresh your memory as to how
7 many you may have interviewed?

8 A. Yes.

9 Q. I show you what's been admitted as Exhibit
10 E. It's up on the monitor there. Is that a
11 report -- at least -- that's not your report, but it
12 indicates, the first paragraph, Memorandum from STG
13 to Warden Tafoya, titled "Confidential sources on the
14 murders of inmates Frank Castillo and Rolando Garza."
15 Do you see that?

16 A. I do.

17 Q. If we scroll down, is this the kind of --
18 is this how you would identify inmates by a number,
19 rather than by their name, if they're trying to give
20 you confidential information?

21 A. That's correct, yes.

22 Q. And would you number your sources 1, 2, 3,
23 et cetera?

24 A. Pretty close, yes.

25 Q. So does this look like a memorandum of

1 people that you may have -- or inmates you may have
2 spoken to?

3 A. I don't know if I spoke to these
4 individuals myself, no.

5 Q. Do you recall doing a memorandum -- I'm
6 sorry, do you recall interviewing -- do you recall
7 anything about the interviews you conducted?

8 A. Not -- no, not very much. It's been a
9 while, so --

10 Q. I want to turn your attention to page 3 of
11 this document. Well, actually, let me stay on this
12 page for just a second. I apologize. The memorandum
13 that -- this indicates memorandum from STG to you,
14 entitled "Confidential sources," et cetera, what
15 would you have done with that memorandum?

16 A. I would have reviewed it and forwarded it
17 up the chain of command.

18 Q. And who would be up the chain of command?

19 A. That would be the Director of Adult
20 Facilities, John Shanks, and probably Mr. Jerry
21 Tafoya, and probably Mr. Elmer Bustos.

22 Q. Let's go now to page 3 of the exhibit. Do
23 you recall whether or not you interviewed an
24 individual identified as Source No. 13 that said he
25 overheard inmate Eugene Martinez talking with inmates

1 Leroy Lucero and Jesse Ibarra about carrying out
2 assaults on inmates considered to be rats?

3 A. I do not recall. It could have -- I could
4 have conducted that interview. I don't recall.

5 Q. Okay. So that could have been conducted by
6 you or someone else?

7 A. Yes.

8 Q. Do you recall inmate Eugene Martinez?

9 A. I -- vaguely, yes, I do.

10 Q. And what do you recall about him? Was he
11 an inmate there at that time?

12 A. I would believe that he was an inmate at
13 the time, yeah, there at that facility.

14 Q. As part of your job as the Warden, do you
15 try to keep a feel on the pulse of the institution
16 that you're the Warden of?

17 A. Yes.

18 Q. And does that involve knowing about prison
19 gangs that are operating within your facility?

20 A. Yes, sir.

21 Q. In 2001, was the Southern New Mexico
22 Correctional Facility an SNM prison?

23 A. We had a large population of SNM members,
24 yes.

25 Q. Would part of your duties be to get a feel

1 for who may be the leaders of the SNM Gang at your
2 facility?

3 A. To my knowledge, yes. There was also
4 documentation that would follow the inmates as they
5 would be transferred from facility to facility.

6 Q. Prior to the homicides in 2001, was there
7 an inmate by the name of Lino Giron at your facility?

8 A. Yeah, I believe so, yes.

9 Q. And was he identified as the leader of the
10 SNM in your facility, at least through the early
11 months of 2001?

12 A. If I recall correctly, he was one of the
13 leaders of the SNM.

14 Q. And when he left, do you recall that
15 another individual became the leader at the facility
16 by the name of Leroy Lucero?

17 A. I do not recall if -- I don't know if that
18 was the way it happened, or Leroy Lucero was the -- a
19 leader there, or what.

20 Q. Do you recall Leroy Lucero?

21 A. I do.

22 Q. And was he an SNM member?

23 A. Yes, he was.

24 Q. Was he a high ranking SNM member, to your
25 knowledge?

1 A. To my knowledge, yes, he was.

2 Q. And when -- in your memory, when you were
3 investigating the murders, was Leroy Lucero a suspect
4 in the murders of these two individuals?

5 A. I do not recall. I don't think he was.

6 Q. How about Jesse Ibarra?

7 A. I do not recall.

8 Q. So with respect to this document, you can't
9 endorse it or reject it as being reflective of your
10 interviews?

11 A. I think these interviews, according to this
12 document, were conducted by the STG Unit.

13 Q. Okay. So that wouldn't be your interview
14 then?

15 A. No, I don't think so.

16 Q. Who would have conducted this interview?
17 If you could take a look at maybe page 1 of the
18 exhibit again. Would this be Cheryl Lackey, perhaps?

19 A. It would be someone within that unit.

20 MR. CASTLE: Okay. I have no other
21 questions for this witness.

22 THE COURT: Thank you, Mr. Castle. Any of
23 the other defendants have direct examination of
24 Mr. Tafoya?

25 MR. SOLIS: I may have, Your Honor.

1 THE COURT: Mr. Solis.

2 MR. SOLIS: If I can have a look at the
3 exhibit first. May I approach?

4 THE COURT: You may.

5 MR. SOLIS: One moment, Your Honor.

6 THE COURT: You may.

7 MR. SOLIS: I have no questions, Your
8 Honor.

9 THE COURT: Thank you, Mr. Solis. Any
10 other defendant have any direct of Mr. Tafoya?

11 All right. Mr. Beck, do you have
12 cross-examination of Mr. Tafoya?

13 MR. BECK: I do, Your Honor.

14 THE COURT: Mr. Beck.

15 CROSS-EXAMINATION

16 BY MR. BECK:

17 Q. Good afternoon, Mr. Tafoya.

18 A. Good afternoon.

19 Q. On March 25 and 26 of 2001, were there
20 cameras inside the pods filming the activities, what
21 was going on inside the pods?

22 A. I do not believe that there were cameras in
23 the pods.

24 Q. And why is that?

25 A. I don't know if we had them back then. I

1 can't recall. Or if they were not operational.

2 Q. Okay. You don't remember reviewing any
3 videotapes of what I would call security cameras in
4 the pods; is that fair to say?

5 A. That's fair to say.

6 Q. And I think you said with Mr. Castle, did
7 you investigate what happened after the Garza and
8 Castillo murders?

9 A. Yes.

10 Q. And if you were investigating that, if
11 there was video inside the pods at the time, is that
12 something that would have been important to your
13 investigation?

14 A. Absolutely, yes.

15 Q. So is that why, after thinking back on the
16 investigation, and not finding or reviewing any
17 videos, is that why you think that there were no
18 videos in 2001?

19 A. I don't recall reviewing any videotapes.

20 Q. And is that something you would have done
21 in that investigation?

22 A. Yes, it would have been part of it,
23 absolutely.

24 Q. After the Garza and Castillo murder, when
25 you were investigating those, do you recall seeing

1 pictures of the inside of one of the inmate's cells?

2 A. Yes.

3 Q. And I think there is some evidence that
4 there may have been a video. Do you remember whether
5 you saw pictures or a video, or both?

6 A. I think there were still photos.

7 Q. They were still photos. So you don't
8 remember seeing video of the inside of the pods at
9 that time?

10 A. I don't recall seeing a video.

11 MR. BECK: And, Your Honor, I'm going to
12 mark for identification purposes Government's
13 Exhibit -- I think we're on 1, right, Ms. Bevel?

14 THE COURT: For the motion to dismiss, this
15 is your first one?

16 MR. BECK: I think so, Your Honor. And it
17 is -- it's a report that starts at Bates No. 716, and
18 I think it was probably the fifth attachment to
19 Mr. Garcia's motion. And it's a memorandum on the
20 murders of inmates Orlando Garza, 46367, and Frank
21 Castillo, 35958.

22 May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q. I've handed you what I've marked for
25 identification purposes as Government's Exhibit 1.

1 Do you recognize that as a New Mexico Corrections
2 Department memorandum?

3 A. I do.

4 Q. And who is that memorandum addressed to?

5 A. It's addressed to myself.

6 MR. BECK: Your Honor, at this time, I'll
7 move Government's Exhibit 1 into evidence for the
8 purposes of this motion.

9 THE COURT: Any objection from the
10 defendant? Mr. Castle?

11 MR. CASTLE: No, Your Honor.

12 THE COURT: All right. Not seeing or
13 hearing any objection, Government's Exhibit 1 will be
14 admitted into evidence.

15 Q. What happened to the phone systems after
16 the Garza and Castillo murder, if you remember?

17 A. They would routinely -- in the event of any
18 type of major incident, they would routinely be
19 turned off.

20 Q. And if we turn to page 2 of Government's
21 Exhibit 1, I'll direct your attention to what I think
22 is the first full sentence there. And it starts
23 with --

24 A. I see that.

25 Q. So does that indicate to you that at the

1 time of the murder, the murders, all inmate telephone
2 lines were turned off, to include the Paul Oliver
3 unit?

4 A. That's correct.

5 Q. Then I'm going to turn your attention to
6 page 10 of Government's Exhibit 1. Do you remember
7 that these murders happened sometime in the night or
8 morning of March 25, March 26 of 2001?

9 A. As I recall, yes, sir.

10 Q. So on page 6 of -- excuse me, on page 10 of
11 Government's Exhibit 1, do you see up there where it
12 has a report from April 6 of 2001?

13 A. I do.

14 Q. And I'm pointing to what looks like sort of
15 the third heading there. Do you see that, at least
16 at this point, the telephones at Paul Oliver unit
17 were still not working properly?

18 A. Yes, I do.

19 Q. Do you have any reason to disagree that the
20 phones weren't work properly?

21 A. No, I do not.

22 Q. And do you recall whether, after the Garza
23 and Castillo murders, the Security Threat Group and
24 other corrections officers were monitoring the
25 inmates' mail?

1 A. To my knowledge, that would be the
2 procedure, yes.

3 Q. And on page 12 of Government's Exhibit 1,
4 do you see where it indicates that, as of April 12,
5 2001, mail scans were being continued by STG of
6 inmate outgoing mail?

7 A. Yes.

8 Q. Is that consistent with your memory of what
9 happened after the Garza and Castillo murders?

10 A. Yes, sir.

11 MR. BECK: May I have a moment, Your Honor?

12 THE COURT: You may.

13 MR. BECK: Nothing further, Your Honor.

14 THE COURT: Thank you, Mr. Beck.

15 Mr. Castle, do you have redirect of
16 Mr. Tafoya?

17 MR. CASTLE: Yes.

18 RECROSS-EXAMINATION

19 BY MR. CASTLE:

20 Q. Mr. Tafoya, there were some questions about
21 video of the pods.

22 A. Yes.

23 Q. How certain are you that there were no
24 video cameras in the pods?

25 A. Pardon me?

1 Q. How certain are you that there were not?

2 A. I don't know if there were video cameras in
3 the pods. But I -- I don't know -- we didn't have
4 any video recordings of the pods, I could say that
5 much.

6 Q. So none were collected as evidence, is that
7 what you're indicating?

8 A. I'm indicating that I don't know if there
9 was any video of the pods at all.

10 Q. Okay. So you don't know one way or the
11 other whether there were; but you never saw any?

12 A. I never saw any. I don't believe there
13 were.

14 Q. Now, how about of the yard and other common
15 areas?

16 A. I can't say for sure that there were video
17 recordings of the yard.

18 Q. Do you recall, in thinking back to 2001,
19 ever looking at video either of the yard, or anywhere
20 else, that was a piece of evidence that you thought
21 showed a part of the planning or the commission of
22 the murders?

23 A. I can't recall, no.

24 Q. Do you recall ever interviewing an inmate
25 and telling them that you had them on video with

1 another individual that you suspected of the murder?

2 A. No, I can't recall that.

3 Q. Is that something you'd remember?

4 A. I would think so. Again, it's been 17
5 years, so --

6 Q. If you were to have done an interview like
7 that, where you sat down with an inmate and said:
8 Here, I have video. We know you participated in the
9 planning or the commission of the murder, would you
10 write a memo about that and memorialize that
11 interview?

12 A. I would think I would, yes.

13 Q. Did you do interviews with an individual by
14 the name of Billy Garcia?

15 A. I don't recall doing an interview with
16 Billy Garcia.

17 Q. Do you recall doing an interview with any
18 of the individuals here?

19 A. I don't remember any of these individuals
20 here. Or at least a couple of them, I don't
21 recognize them.

22 Q. How about Leroy Lucero?

23 A. No.

24 Q. How about Leonard Lujan?

25 A. I don't recall.

1 Q. Let's go through that report, if I could,
2 the Government's exhibit. I'm going to represent
3 that what's up on your screen is the same report that
4 was admitted as Government's Exhibit 1.

5 A. It looks like it.

6 Q. If we could go to page 2. I want you to
7 count down five lines.

8 A. Okay.

9 Q. The sentence that starts with, "The day
10 shift." In this report, does it indicate, "The day
11 shift supervisors secured the daily logs of housing
12 units O1 and P1, as well as the rest of the
13 facilities' logs"?

14 A. I see that.

15 Q. Is that standard operating procedure in a
16 matter such as this?

17 A. It is.

18 Q. Why?

19 A. To determine if any irregularities were
20 mentioned in those logs.

21 Q. So unusual activity?

22 A. Right.

23 Q. And I notice that it didn't confine it to
24 the two pods where the murders happened, it went to
25 the whole facility itself?

1 A. Right.

2 Q. Is that because in the investigation it may
3 turn out that important events happened somewhere
4 else other than the pods where the crimes occurred?

5 A. Normally, it was a procedure to gather logs
6 from the entire facility every 24-hour shift.

7 Q. And where would those logs have gone?

8 A. If they were -- if there was significant
9 information in those logs pertaining to incidents, it
10 would be turned over as evidence.

11 Q. If we could go to the bottom of that page.
12 The second to the last line indicates, "Inmate Martin
13 Chacon is discovered with a black shoelace inside a
14 toilet paper roll. The shoelace was fashioned into a
15 noose." And then if we could go on to the next page.
16 "This was also taken into evidence by the New Mexico
17 State Police."

18 Why was that important? Let me ask you a
19 more pointed question. Was that important because
20 these were strangulation deaths?

21 A. Most likely, yes. It was important anyway,
22 because that's contraband.

23 Q. But contraband is not normally handed over
24 to the State Police if it isn't involved in a crime
25 or possibly involved in a crime?

1 A. Correct.

2 Q. In regard to the mail scans, why are those
3 conducted?

4 A. To gather information on -- information
5 that may be a threat to the security of the
6 institution.

7 Q. And also, perhaps, if it was evidence that
8 related to the murders that had happened, would that
9 be correct?

10 A. That would be correct.

11 Q. And are the -- who does the mail scans?

12 A. It depends on who was assigned to that task
13 at the time.

14 Q. Would it be someone from the STIU, or
15 whatever that -- STG back then?

16 A. It could have been. We had other officers,
17 other staff doing mail scans as well.

18 Q. And are they instructed -- what are they
19 instructed to do?

20 A. Normally, turn it over as evidence. If
21 they found anything that was relevant, to take it up
22 the chain of command.

23 Q. Now, is mail normally scanned anyway, even
24 if there is not a murder?

25 A. It is.

1 Q. So would this have been maybe a little
2 tighter scan of the mail than would have occurred
3 normally?

4 A. I would anticipate that being the case.

5 Q. And so any mail that was even remotely
6 suspicious would be copied or collected and sent
7 along to somewhere else?

8 A. I would imagine that would be the case.

9 Q. Would that be turned over to the State
10 Police, if it had to do with the murders?

11 A. I would imagine so.

12 MR. CASTLE: I don't have any other
13 questions.

14 THE COURT: All right. Thank you, Mr.
15 Castle. Anyone else on the defense side have any
16 questions?

17 MR. SOLIS: I have some questions, Your
18 Honor.

19 THE COURT: All right. Mr. Solis.

20 RECROSS-EXAMINATION

21 BY MR. SOLIS:

22 Q. Mr. Tafoya, I'm going to direct your
23 attention to Defendant's Exhibit I. Think we'll
24 bring it up here. Do you see that?

25 A. I do.

1 Q. And you're the author of that memorandum?

2 A. I am.

3 Q. Back on April the 12th of 2001, addressed
4 to Mr. Shanks and Mr. Jerry Tafoya -- is he any
5 relation to you at all?

6 A. No.

7 Q. All right. So this is just a few days
8 after the incident, the murders at the facility;
9 correct?

10 A. Correct.

11 Q. April the 12th; these events occurred on
12 March 26?

13 A. Yes.

14 Q. And it seems like you, yourself, conducted
15 an investigation, and then you mentioned that you
16 conducted several interviews of inmates or with
17 inmates; is that right?

18 A. Correct.

19 Q. And you note there at the -- towards the
20 bottom of that memorandum, on that first page, you
21 note several inmates as assailants, according to a
22 Source 1A. Do you see that?

23 A. I do.

24 Q. And do you see anywhere there Christopher
25 Chavez mentioned?

1 A. Not on this memorandum, no.

2 Q. Did you, yourself, conduct an interview
3 with Mr. Chavez?

4 A. I do not recall.

5 Q. Did you draft a report that would indicate
6 that you, yourself, conducted?

7 A. I do not recall. I may have.

8 Q. And if -- well, would you agree with me
9 that to conduct an investigation following a murder,
10 it's best to conduct it soon after rather than later,
11 let's say a month later?

12 A. Depends on how information surfaces.

13 Q. Okay. People's memories are better soon
14 after the event?

15 A. I would imagine, yes.

16 Q. And I think there was testimony earlier
17 today where there was indication that soon after the
18 murders, or immediately after the murders, there was
19 lockdown of several inmates; is that right?

20 A. That would probably be the normal routine,
21 yes.

22 Q. And that doesn't mean that they're not
23 allowed access to one another, at least to
24 communicate in some fashion? That does happen,
25 doesn't it?

1 A. I would imagine they can yell from cell to
2 cell.

3 Q. Okay. So communication isn't prohibited;
4 they can still do it, they can find a way?

5 A. I would imagine, yes.

6 Q. Okay. And so the memorandum that was a
7 Government's exhibit moments ago, that came after the
8 April 12, 2001 memorandum we're looking at now; is
9 that right?

10 A. Which?

11 Q. I think that was Exhibit E.

12 A. This one is dated April 2.

13 Q. Yeah, Government's exhibit, where
14 Mr. Chavez is noted as a possible suspect by your
15 source.

16 A. This one is dated April 2.

17 Q. Right -- April the 12th, actually, 2001.

18 A. This one is dated April 2, 2001.

19 Q. Right. And I'm looking for the
20 Government's exhibit, actually.

21 MR. BECK: Yeah, I think it's probably page
22 12 you're looking for.

23 MR. SOLIS: Page 12. What's your exhibit?
24 Government's Exhibit 1. May I approach, Your Honor?

25 THE COURT: You may.

1 MR. SOLIS: Can we get Exhibit 1 for the
2 Government up?

3 MR. BECK: What's the Bates number on the
4 last page there?

5 MR. SOLIS: 727. One moment, Your Honor.

6 THE COURT: Certainly.

7 BY MR. SOLIS:

8 Q. Is that the reference to Mr. Chavez? So on
9 Government's Exhibit 1, dated April 2, there again,
10 days after the event, there is no mention of
11 Mr. Chavez?

12 A. I don't see it.

13 Q. And on April the 12th, again following the
14 event, 10 days after the April 2, again, as per a
15 source, there was no mention of Mr. Chavez as an
16 assailant or having participated in the event; is
17 that right?

18 A. I don't see the document.

19 Q. You don't see the document, or you don't
20 see reference to it?

21 A. I don't see the document.

22 MR. SOLIS: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q. That's Exhibit 1, or rather, Exhibit I.

1 A. No, it doesn't say "Chavez" on this
2 document.

3 Q. It does not indicate it, right?

4 MR. SOLIS: May I approach again, Your
5 Honor?

6 THE COURT: You may.

7 Q. Again, just to emphasize the point: April
8 the 2nd, which is prior to Exhibit I, this is
9 Government's Exhibit 1, there is no reference to
10 Mr. Chavez there, Mr. Tafoya?

11 A. "Chavez" does not appear on this document.

12 Q. Right.

13 You elicited the assistance of State Police
14 Officer Felipe Gonzalez to verify the information in
15 your investigation, or pursuant to your
16 investigation?

17 A. I believe so, according to the
18 documentation.

19 Q. And I think it's up now. Exhibit I for the
20 defense, on page 2 you memorialize that assistance
21 where you ask Felipe Gonzalez to essentially
22 corroborate the information in speaking to the source
23 that resulted in your excluding -- or not including,
24 that is -- Mr. Chavez as a suspect or as an assailant
25 in that murder. Do you see on the second page,

1 fourth paragraph down, Mr. Gonzalez, Felipe Gonzalez,
2 state agent?

3 A. I see that.

4 Q. Did he not confirm the information from
5 that source, that Mr. Chavez was not mentioned as a
6 suspect or as an assailant?

7 A. It doesn't say whether he confirmed it or
8 not.

9 Q. He did speak with the source, according to
10 your memorandum; correct?

11 A. Yes.

12 Q. Did you draft a second memorandum?

13 A. I do not recall.

14 Q. This is certainly a significant event, a
15 murder, right?

16 A. Yes.

17 Q. And you would draft a memorandum -- you,
18 yourself -- had you found different information
19 from -- or discovered information that was not
20 consistent with your initial report?

21 A. I may have, yes.

22 Q. Did you?

23 A. I don't recall.

24 MR. SOLIS: Thank you, sir.

25 THE COURT: Thank you, Mr. Solis. Any

1 other defendant have any redirect?

2 Anything further, Mr. Beck -- or cross.

3 All right. Mr. Tafoya, you may step down. Is there
4 any reason Mr. Tafoya cannot be excused from the
5 proceedings, Mr. Castle?

6 MR. CASTLE: No, Your Honor.

7 THE COURT: Anybody else? Mr. Beck?

8 MR. BECK: No, Your Honor.

9 THE COURT: All right. You're excused from
10 the proceedings. Thank you for your testimony.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right. Does somebody want
13 to check with Ms. Rogers, and see if we want to go
14 with Mr. Garcia? Or do you want to squeeze your
15 other witness in, Mr. Castle?

16 MR. CASTLE: Your Honor, we've decided to
17 let that other witness go. I think we don't need him
18 anymore.

19 THE COURT: Okay. So do you want to check
20 on Ms. Rogers and see if she's ready?

21 MR. CASTLE: Somebody might have already
22 gone, but I'll go as well. His lawyer needs a few
23 more minutes. She said she'd come in and let us know
24 when she's ready.

25 THE COURT: Do we have something we can do

1 profitably while we're waiting for her?

2 MR. CASTLE: Mr. Benjamin has something.

3 MR. BENJAMIN: We met this morning, Your
4 Honor. If I could have a second with the Government.

5 THE COURT: You may.

6 MR. BENJAMIN: Your Honor, I'm just going
7 to try and find the number of the bill of
8 particulars, 13 through 16, and that will be just
9 about five minutes.

10 THE COURT: All right.

11 MR. BECK: I think it's 1319.

12 MR. BENJAMIN: Your Honor, this morning Ms.
13 Armijo and I met regarding the bill of particulars,
14 as was discussed yesterday. And Document 1319 should
15 be Joe Gallegos' motion for bill of particulars on
16 Counts 13 through 16. And I am left with two
17 requests, Your Honor. And those, I think, are fairly
18 simple requests, and they're the same as I had on
19 Counts 4 and 5.

20 For Count 13, it would simply be -- they've
21 alleged a deadly weapon. I would request that they
22 elect and choose or identify the deadly weapon.

23 And for Counts 14 through 16, they have
24 three theories of liability, as far as what the
25 witness was being tampered with, or threatened. And

1 the Court has heard two of them, I believe. There
2 was testimony during the James hearing that Jose
3 Gomez was being sought because he was a witness in a
4 murder investigation involving Joe Gallegos, and
5 because he was a witness in the -- or he was the
6 victim in the March 2015 assault that forms Count 13.

7 And as the Court heard, Mr. Castellano said
8 that wasn't it. And the agent testified that was it.
9 So we're asking that the Government elect whether he
10 was being threatened and/or tampered with in Counts
11 14 through 16 because he was an SNM, and this was an
12 SNM investigation; whether it was because of the
13 March 2015 assault; or whether it was for an
14 unspecified -- and we request they specify the
15 murder, or any one of those three, or something to
16 that effect. And that's the issue, Your Honor, I
17 think, just notice-wise, we're entitled to both of
18 those requests under Count 13, for the specificity of
19 the weapon, and Counts 14 through 16 for the act or
20 acts that he was going to be a witness in.

21 THE COURT: All right. Ms. Armijo.

22 Thank you, Mr. Benjamin.

23 MS. ARMIJO: Your Honor, I believe that --
24 I'm surprised about the Count 13. I believe that we
25 had said, and that when we spoke, that we believed it

1 was knife. So I don't know --

2 THE COURT: I think he's looking for 4 and
3 5 now, right?

4 MR. BENJAMIN: Your Honor, we did speak.
5 And we did agree. That was my fault. I guess I
6 would ask the Government to change its pleadings to
7 reflect that. But she did clarify that it was a
8 knife. We're talking about 14 through 16 as well.

9 MS. ARMIJO: It believe it just says a
10 dangerous instrument, which a knife would be. I
11 don't think we need to change any pleadings.

12 THE COURT: Well, I probably won't order
13 any change of pleadings. But let me make sure I
14 understand. On 4 and 5, is it -- it's a gun, right?

15 MS. ARMIJO: It's a firearm, yes. A
16 firearm was not recovered. I'm not sure --

17 THE COURT: Do you need anything more than
18 that?

19 MR. BENJAMIN: I apologize, Your Honor.
20 You're saying Counts 4 and 5, and we're talking about
21 Count 13 is the knife. And there was no firearm
22 recovered in Count 13. But 13, the Government has
23 told me is a knife.

24 THE COURT: Okay. So you don't need to
25 know the identity of the weapon for 4 and 5? You

1 need it for 13?

2 MR. BENJAMIN: I'm not requesting -- I
3 think the Court has covered my bill of particulars on
4 4 and 5, Your Honor. For Count 13 I'm asking that if
5 they're saying -- and they did tell me this morning
6 it was a knife -- I'm asking for them to plead that
7 it's a knife. And then on 14 through 16, Your Honor,
8 it would simply be the election of what Mr. Gomez was
9 a witness in.

10 MS. ARMIJO: And I believe that he has our
11 three theories that we have. He's asking us to
12 elect. And I don't believe that we are required to
13 elect.

14 THE COURT: You're not required to elect.
15 But I think what he's asking for on the third theory,
16 if I understand the numbering system, yesterday we
17 were talking about it being a murder case that he was
18 a witness in. Can you identify the murder case?

19 MS. ARMIJO: Your Honor, I'm not sure about
20 that. Mr. Gomez -- and what I told him this morning
21 is that, if in fact, there is a murder that I'm
22 unaware of, there is another witness that would be in
23 reference to murder cases.

24 But as I am reading the 302s right now, I
25 don't have that as to Jose Gomez. If, for any reason

1 that changes when we meet with Jose Gomez, I will
2 certainly let him know. I explained to him, and he
3 was familiar with the procedure that we went through
4 in the first trial, that he would be immediately
5 notified.

6 But there isn't some underlying murder that
7 we're keeping from him or anything else right now.

8 THE COURT: So you're just down to two
9 theories? He wasn't a witness in any murder case
10 that you're aware of?

11 MS. ARMIJO: Not a charged murder case that
12 I'm aware of. And I know that Mr. Gallegos, we
13 believe, is the suspect of several murder cases. And
14 I think he has 302s in reference to that. I'm just
15 not sure, at this point in time -- and I refer to
16 that 302, and that witness, that would say those
17 things.

18 My only concern is I don't know if Jose
19 Gomez knows about those incidents, and if that's what
20 he's talking about. But so at this point in time, I
21 don't have anything specific to give him. I gave him
22 specific information on the other two. If, in fact,
23 I learn more information, as I told him this morning,
24 I would certainly let him know right away.

25 But there isn't, like, some murder case

1 that I -- like off the top of my head or in the
2 discovery that I can think of that would be -- Jose
3 Gomez was going to testify as to these other murders.

4 THE COURT: Let's put the word "case" then
5 off the table.

6 MS. ARMIJO: Correct.

7 THE COURT: Do you at the present time have
8 a murder that you intend to offer evidence of that
9 Mr. Gomez would be a witness against Mr. Gallegos
10 for, at the present time?

11 MS. ARMIJO: That Mr. Gomez would? Not at
12 this time.

13 THE COURT: All right. So for the present
14 time, can we take the third theory off the table?

15 MS. ARMIJO: Yes. For the present time,
16 yes, as to Mr. Gomez.

17 THE COURT: So unless you alert
18 Mr. Benjamin, he has two theories he has to deal
19 with, not three?

20 MS. ARMIJO: Correct.

21 THE COURT: And the knife takes care of the
22 weapon on 13?

23 MS. ARMIJO: Correct.

24 THE COURT: All right. What else do you
25 need, Mr. Benjamin?

1 MR. BENJAMIN: Your Honor, the only way I
2 know to say this is Ms. Armijo is correct. They're
3 not hiding anything. My problem is they're also
4 three weeks out from trial, and not choosing what
5 they're going to try Mr. Gallegos on. And so I
6 have --

7 THE COURT: They've taken one theory off
8 the table. Do you have questions either on the knife
9 or the two theories that they're still going to trial
10 on?

11 MR. BENJAMIN: Your Honor, yes, because
12 I'm -- I think the indictment, essentially, says an
13 official proceeding. So I think that has to be the
14 March 2015 assault, is my belief and my gut belief.

15 THE COURT: It sounds like that's not the
16 case anymore; is that correct, Ms. Armijo?

17 MS. ARMIJO: No. As I explained in great
18 detail to Mr. Benjamin this morning, our theory is
19 that: Once he was indicted on December 3 of 2015,
20 all of his racketeering activities are relevant to
21 his federal prosecution, much like all of his bad
22 acts, much like anything else that could be
23 considered relevant activity. I explained to him
24 this morning about our theory as to how the March
25 incident would be SNM activity, would be considered

1 racketeering activities, and how, even though it
2 wasn't a formal state or formal federal proceeding,
3 it certainly could be evidence used in his formal
4 federal case as racketeering activity.

5 So, to that extent, no, that's not off the
6 table really, I don't believe it is. And he also --
7 so -- I mean, I know he disagrees with us. But
8 that's not a bill of particulars. He can argue this
9 in the Rule 29 motion, which I'm sure he's going to,
10 that we have not met our VICAR and our elements of
11 the crime. But at this point in time, he knows great
12 detail about our theory, about our evidence. And I
13 think we can have various theories as to this. We're
14 now down to two theories. And just because he
15 disagrees with it, doesn't mean -- or feels that it's
16 not proper, bill of particulars is not the venue.
17 And we have bent over backwards now to explain our
18 theory, and to go over the evidence with him.

19 THE COURT: All right. Mr. Benjamin.

20 MR. BENJAMIN: She has, Your Honor. I'm
21 looking for it in black and white. To wit: March
22 15 -- I'm missing the exact date -- March 2015
23 assault. Because I think that if they're going to
24 try Mr. Gallegos on an indicted count, it should say
25 that.

1 THE COURT: Okay. You're saying you want
2 it put into writing?

3 MR. BENJAMIN: Yes, Your Honor.

4 THE COURT: All right. Well, I'm not going
5 to require any amendment of the pleadings. I think
6 the bill of particulars is to get their theories and
7 evidence.

8 MR. BENJAMIN: And they have done that,
9 Your Honor.

10 THE COURT: All right. So I'll deny the
11 motion. But I do think that they've gotten the
12 theories and the evidence. And if they're going to
13 try to do anything else, they committed to getting a
14 letter to you as soon as possible.

15 MR. BENJAMIN: Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Benjamin.

17 I thought I saw Ms. Rogers duck her head in
18 and then head back out. Anybody want to check on her
19 and tell her what time it is.

20 Do you have something, Mr. Burke?

21 MR. BURKE: I'll take up 20 seconds. If
22 they're going to really start piling on Joe Gallegos,
23 the idea of a bifurcated jury starts getting more
24 interesting to the defendants, Your Honor. If
25 they're really going to do all that, that's really

1 going to create a spillover.

2 THE COURT: Well, they took one theory off
3 the table. So it's a little less piling on.

4 MR. BURKE: Yes, we've got a little less.
5 But I'm hoping we can get that other jury going.

6 THE COURT: So we pull a theory off, and we
7 get a renewed motion to sever?

8 MR. BURKE: I'm hearing some piling on,
9 Judge.

10 THE COURT: All right. Mr. Castle.

11 MR. CASTLE: Just to fill some time. We
12 have two orders that the Court had asked us to draft.

13 THE COURT: All right.

14 MR. CASTLE: The first is phone calls
15 concerning Leonard Lujan. But, Your Honor, what I've
16 been told from people that are actually handling all
17 these phone calls, that there is a number of
18 different individuals' phone calls that are missing
19 that we subpoenaed, and they've refused to give
20 without a federal court order. And so what I'd like
21 to do is -- I've given copies to the prosecution --
22 is have the order be for all these different phone
23 calls, so that we're not having to come back to the
24 Court numerous times with the same similar orders.
25 And it's all for witnesses that the Government has

1 said they're going to call, and are likely to call.
2 So they'd be individuals such as Robert Lovato,
3 Frederico Munoz, Gerald Archuleta, Robert Martinez,
4 Benjamin Clark.

5 THE COURT: Any objection to doing it that
6 way, Mr. Beck?

7 MR. BECK: Well, no, but I will comment
8 that if these are the two orders that Mr. Castle
9 handed me earlier today, I think we're sort of two
10 ships passing in the night here. Because these are
11 directed at New Mexico Corrections Department. New
12 Mexico Corrections Department's calls have been
13 produced, and are ongoing production. What my
14 understanding was from yesterday, is that they want
15 jail calls from facilities that are not Corrections.

16 THE COURT: The Corrections' facilities in
17 possession of marshals?

18 MR. CASTLE: Yes. But it's my
19 understanding it's actually the Department of
20 Corrections has large gaps in their phone calls. So
21 despite what --

22 THE COURT: I didn't hear that objection in
23 the first trial that there was any gaps. But if you
24 do, it sounds like you just need to talk to Mr. Beck
25 about that, because they will try to remedy it. But

1 the only thing I heard complaints in the first trial
2 was just a lot of phone calls, but not gaps.

3 MR. CASTLE: Well, I think they only
4 listened to certain ones because they didn't have
5 enough time. I think that's --

6 THE COURT: My suggestion is you just talk
7 to Mr. Beck about what gaps you have. And then, if
8 you can't work it out, respond. But I think -- I'll
9 use the word, not pejoratively, but they're dumping a
10 lot of phone calls on you, and I don't think they're
11 trying to create any gaps.

12 MR. CASTLE: Well, I could tell the Court
13 that we did contact them in January about the gaps in
14 Leonard Lujan's calls. And we haven't received any.
15 So I don't know how quickly they're going to get
16 turned around. Perhaps, I could talk to the
17 prosecution.

18 THE COURT: I guess if you don't care, Mr.
19 Beck, I can sign the order, and they can go the long
20 way, if you don't care.

21 MR. BECK: That's news to me. I think that
22 there are additional phone calls that were produced
23 to us over the weekend, that we produced either
24 yesterday or the day before to Mr. Aoki. So those
25 may be these calls that they're looking for. Yeah,

1 so I agree with the Court. I don't care. I think
2 that if they talk to us, it will short-circuit --

3 THE COURT: Okay. Anybody else have an
4 objection? Not hearing any, do you want to hand me
5 that motion, Mr. Castle.

6 MR. CASTLE: Yes, Your Honor. And I'll
7 talk to the prosecutors. If they already have it,
8 then I won't serve it on Corrections.

9 THE COURT: All right. So which order is
10 the one you just talked about? Is it the one -- oh,
11 one to Corrections and one to PNM. So you've seen
12 these, Mr. Beck? You know what I'm about to sign?

13 MR. BECK: Yes, Your Honor.

14 MS. HARBOUR-VALDEZ: Your Honor, on Monday
15 you ordered the Government to turn over by Wednesday
16 the co-conspirator statements from Trial 1 that they
17 intended to use. I asked Mr. Beck about this
18 yesterday morning, and he said they would file
19 something. But we have yet to receive that.

20 THE COURT: Were we going to resolve that
21 with just the production of the transcripts -- oh,
22 no, no, I know. Yeah, okay, I got you.

23 MR. BECK: Something different. That
24 probably -- Mr. Castellano is out of the office --
25 that probably fell through the cracks. I think what

1 we're going to do is file -- just file a notice that
2 attaches the Court's opinion, the pages from the
3 Court's opinion that has the Trial 1 statements. So
4 I will make sure that we do that tonight when I get
5 back.

6 THE COURT: So every co-conspirator
7 statement in the first trial, you're going to try to
8 introduce in the second trial?

9 MR. BECK: I don't know that we're going to
10 try to introduce it. But I know that we're just
11 going to provide them notice of it because they asked
12 for it. So they are co-conspirator statements, the
13 Court has already found they are co-conspirator
14 statements. They're admissible in this trial, if
15 those people testify.

16 THE COURT: Those were different
17 conspiracies?

18 MR. BECK: Right.

19 THE COURT: I don't know how they'd be
20 admissible in this trial under the co-conspirator
21 statement, if none of those defendants are -- if none
22 of those conspiracies are being tried here.

23 MR. BECK: Those conspiracies would be
24 racketeering activity.

25 THE COURT: Well, they might be, but they

1 wouldn't be used against any of these people.

2 MR. BECK: Well, they'd be used against
3 these people as racketeering activity.

4 THE COURT: No, they can't come in as
5 evidence. They're inadmissible in this trial. There
6 is not a party in here that they can be used against.

7 MR. BECK: All right. Well, I see what
8 you're saying, and I really hadn't thought much about
9 it. I wasn't taking this on. I don't know that
10 changes our approach. But it was an oversight. I'll
11 talk to Mr. Castellano. I think we're probably still
12 going to file the notice, and we can hash that out if
13 you want, and the Court can find them inadmissible.
14 But --

15 THE COURT: Okay. Well, they're probably
16 inadmissible.

17 MS. HARBOUR-VALDEZ: I would agree.

18 THE COURT: We have to establish, A,
19 conspiracy, and they've identified eight, and I don't
20 think any of those statements relate to this. I'd
21 have to establish the membership. But the whole
22 statements were being -- were largely the defendants'
23 in that case.

24 There is Ms. Rogers. Let's see if we can
25 maybe use these five minutes to get these 13

1 questions done. Ms. Rogers, have you had an
2 opportunity to meet with Mr. Garcia? Are you ready
3 to deal with him?

4 MS. ROGERS: I am, Your Honor. And again,
5 I apologize for my attire.

6 THE COURT: You have no reason to
7 apologize. But you've had an adequate opportunity to
8 talk to him this afternoon?

9 MS. ROGERS: I have, Your Honor.

10 THE COURT: All right. If you'll bring
11 Mr. Garcia in. We'll go ahead and swear him in. And
12 if you want to sit up here next to him, we've got a
13 seat up here for counsel for some of the witnesses.
14 You're welcome to sit up here.

15 MS. ROGERS: Thank you, Your Honor.

16 THE COURT: Thank you, Ms. Rogers.

17 All right. Mr. Garcia, if you'll come up
18 and stand next to the witness box right here on my
19 right, and before you're seated, Ms. Bevel will swear
20 you in.

21

22

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 JAMES GARCIA,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. Please state
6 your name, and spell your last name for the record.

7 THE WITNESS: James Garcia, G-A-R-C-I-A.

8 THE COURT: Mr. Garcia. Mr. Castle.

9 BY MR. CASTLE:

10 Q. Mr. Garcia, where were you living in March
11 of 2001?

12 A. I was incarcerated.

13 Q. In what facility, do you recall?

14 A. I can't remember.

15 Q. Was it in Southern New Mexico Correctional
16 Facility?

17 A. No.

18 Q. Have you been interviewed by the FBI or
19 state law enforcement concerning the 2001 murders
20 that happened at Southern New Mexico Correctional
21 Facility?

22 A. I plead the Fifth on that, Fifth Amendment
23 right.

24 MR. CASTLE: I would ask for -- on what
25 grounds, Your Honor?

1 THE COURT: Yeah, Ms. Rogers, just simply
2 the fact that he interviewed with the United States
3 doesn't seem to me to invoke his rights. Do you want
4 to talk to Mr. Garcia on that?

5 MS. ROGERS: Briefly, Your Honor.

6 (The defendant conferred with counsel.)

7 MS. ROGERS: Thank you, Your Honor.

8 THE COURT: All right. Do you want to
9 re-ask your question, Mr. Castle, and we'll see what
10 Mr. Garcia decides to do?

11 BY MR. CASTLE:

12 Q. Have you been interviewed by the FBI or
13 state law enforcement concerning the 2001 murders
14 that happened at Southern New Mexico Correctional
15 Facility?

16 A. Yes.

17 Q. How many times?

18 A. A few times.

19 Q. Do you know a man by the name of Billy
20 Garcia personally?

21 A. No.

22 Q. Have you ever met him?

23 A. No.

24 Q. He's also known by the nickname of "Wild
25 Bill"?

1 A. I've heard of him, but I don't know him.

2 Q. Has anyone ever told you -- in a
3 conversation with you, has anyone ever told you that
4 Billy Garcia ordered the murders that happened at the
5 Southern New Mexico Correctional Facility in 2001?

6 A. No.

7 Q. Has anyone ever admitted to you that they
8 were involved in those murders at the Southern New
9 Mexico Correctional Facility in 2001?

10 A. Anybody what?

11 Q. Has anybody ever admitted to you in a
12 conversation with you that they were involved in
13 those murders that happened at the Southern New
14 Mexico Correctional Facility in 2001? Has anyone
15 ever told you that they did it?

16 A. No, not that I remember, no.

17 Q. That would be something you'd remember,
18 isn't it, if somebody admitted a murder to you?

19 A. There is so much stories in there, I don't
20 remember.

21 Q. Now, have you heard rumors about what
22 happened there in 2001, from other inmates, or other
23 people?

24 A. Yeah.

25 Q. But no one has personally said to you, "I

1 did it," or "I was part of it"?

2 A. No.

3 Q. Or say out loud, "I was part of it"?

4 A. No.

5 MR. CASTLE: No other questions.

6 THE COURT: All right. Does any other
7 defendant have direct examination of Mr. Garcia?

8 All right. Mr. Beck. Do you have
9 cross-examination of Mr. Garcia?

10 MR. BECK: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BECK:

13 Q. Mr. Garcia, do you know an FBI Special
14 Agent by the name of Lance Roundy?

15 A. No.

16 Q. Okay. So you were interviewed in person
17 with Lance Roundy on May 9, 2013; isn't that right?

18 A. I think so.

19 Q. So earlier when you just said you don't
20 know anyone named Lance Roundy with the FBI --

21 A. I was with the FBI like about four or five
22 times already. There is so many people that tried to
23 grab me. Names go around. I don't remember. There
24 are so many of them.

25 Q. And when you were interviewed by Lance

1 Roundy on May 9th of 2013, as an FBI agent, you were
2 truthful with him, weren't you?

3 MR. BURKE: I'm going to object. That
4 question is not based on facts in evidence. In fact
5 he denied remembering who Lance Roundy is.

6 THE COURT: Well, I think the purpose of
7 this, if I'm not mistaken -- Mr. Garcia, it's a 104
8 to determine whether some evidence is coming in;
9 correct?

10 MR. BECK: That's my understanding.

11 THE COURT: So I'll allow him to testify.
12 Overruled. You can answer the question.

13 A. Could you say it again?

14 Q. Sure. When you were interviewed by -- I'm
15 not sure I can quote myself, but when you were
16 interviewed by Lance Roundy with the FBI on May 9th
17 of 2013, you were truthful with Mr. Roundy then,
18 weren't you?

19 MR. BURKE: Your Honor, I'm going to
20 object. The 302 that I have of that interview is six
21 pages. It contains many, many statements. It's an
22 unfair question. Mr. Garcia would be entitled to see
23 whatever statements that he's being examined about.

24 THE COURT: Well, we'll let Mr. Beck
25 conduct his cross-examination. And if you want to do

1 something on redirect, or you need something, let us
2 know. Overruled. You can answer the question.

3 A. I plead the Fifth.

4 Q. So you're refusing to answer whether you
5 were truthful with Mr. Roundy?

6 A. I plead the Fifth, sir.

7 Q. Okay. So when you said that -- when you
8 told Mr. Roundy in 2013 that you had a conversation
9 with Edward Troup at a backyard barbecue in
10 Albuquerque in November 2012, that was true, wasn't
11 it?

12 A. Plead the Fifth.

13 Q. And when you said Troup confessed to being
14 part of two murders where two people were strangled
15 to death at the Southern New Mexico Correctional
16 Facility in Las Cruces, New Mexico, that was true,
17 wasn't it?

18 A. I plead the fifth.

19 Q. When you said that, "Troup stated that
20 during one of the murders he held Fred Dawg's legs
21 while Wino, gang member, Javier Alonso, strangled him
22 to death with a drawstring from a laundry bag," that
23 was true, wasn't it?

24 A. Plead the Fifth.

25 Q. You know who Edward Troup is, right?

1 A. Yes, I do.

2 Q. You know who Javier Alonso is?

3 A. No.

4 Q. Do you know who Wino is?

5 A. No.

6 Q. And why would you say that Wino held the
7 legs while Troup strangled him, if you don't know who
8 Wino is?

9 A. I don't know what I said that day. I don't
10 remember. That's why I plead the Fifth.

11 Q. Would it help if I showed you the report
12 from your conversation with Mr. Roundy? Would it
13 help refresh your recollection as to what you told
14 him that day?

15 A. Like I said, sir, I plead the Fifth.

16 Q. Well, that's not my question. My question
17 was --

18 A. I don't remember, sir.

19 Q. Okay. And what I'm asking you is would it
20 refresh your recollection to see what you told
21 Mr. Roundy on May 9th of 2013, if I handed you his
22 report from that day?

23 A. Show it to me, if you want.

24 Q. Sure.

25 MR. BECK: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. And I'm showing Mr. Garcia what's been
3 marked as Government's Exhibit -- or excuse me, it
4 hasn't been marked at all. It's Document 1909-1.

5 So I'm going to direct your attention here
6 to Bates No. 680 to 681. So, again, let me just show
7 you this whole document, see if it refreshes your
8 recollection. So this is May 9, 2013. Do you see
9 that?

10 A. Yeah.

11 Q. Then on the last page of this document it
12 says it was drafted by Lance Roundy. Do you see
13 that?

14 A. Um-hum.

15 Q. Is that a yes? I think you said yes -- I
16 think you said "um-hum." For the court reporter --

17 A. I don't know, I can't --

18 Q. Does that say that it was drafted by Lance
19 Roundy?

20 MS. ROGERS: Just for the record,
21 Mr. Garcia has some reading comprehension difficulty?

22 A. Yeah.

23 MS. ROGERS: So if you want to read it
24 aloud --

25 A. I don't read too good.

1 Q. Okay. So here on the bottom it says, "In
2 late November, 2012" blank "had a -- redacted -- "had
3 a conversation with SNM Gang member, Edward Troup,
4 in" -- blank -- "backyard off of" -- blank -- "in
5 Albuquerque. Do you see that?

6 A. Um-hum.

7 Q. It says, "During the conversation Troup
8 confessed to being a part of two murders, which two
9 people were strangled to death at Southern New Mexico
10 Correctional Facility in Las Cruces, New Mexico." Do
11 you see that?

12 A. Yeah.

13 Q. It says, "Troup stated that during one of
14 the murders he held Fred Dawg's -- agent identified
15 as Freddie Sanchez" -- redacted -- "legs while
16 Wino -- agent identified as SNM gang member, Javier
17 Alonso, Jr." -- date of the birth redacted -- "and
18 strangled him to death with a drawstring from a
19 laundry bag." Do you see that?

20 A. Yes.

21 Q. And then it says, "Both Troup and Alonso
22 disposed of the drawstring and took off their clothes
23 and tore up evidence in an attempt to hide their part
24 in the murder." Do you see that?

25 A. Yes, I do.

1 Q. Does that refresh your recollection whether
2 you told Lance Roundy in 2013 that Troup held Fred
3 Dawg's legs while Wino strangled him?

4 A. I don't remember saying that.

5 Q. Do you remember that this was a long
6 conversation with Mr. Roundy?

7 A. No.

8 Q. And so you don't remember a long
9 conversation, that was approximately six pages of
10 notes in a 302, is that what you're saying today?

11 A. I don't remember.

12 Q. And with Mr. Castle on direct there, I
13 think you said that you had heard rumors about the
14 2001 murders. Do you remember saying that?

15 A. Yes.

16 Q. And did those murders include that Troup
17 held Fred Dawg's legs down while Wino strangled him
18 to death with a drawstring from a laundry bag?

19 A. I heard all kinds of rumors.

20 Q. Okay. That wasn't my question. My
21 question was: Did those rumors include that Troup
22 held down Fred Dawg's legs while Wino strangled him
23 to death with a drawstring and laundry bag?

24 A. No.

25 Q. Those weren't included?

1 A. No, not that I know of, no. I heard a lot
2 of different other stories. But just like what
3 you're putting right there, no.

4 Q. Right. So that's not a rumor; that's true,
5 isn't it?

6 A. I don't know.

7 Q. Well, you know that because you told Agent
8 Roundy that?

9 A. I don't --

10 MR. BURKE: Objection, asked and answered.
11 Now, he's just pestering the witness.

12 THE COURT: Overruled.

13 A. I don't remember telling him that.

14 Q. Okay. But you were truthful with Mr.
15 Roundy in 2013, right?

16 MR. BURKE: Objection; that's been covered
17 as well.

18 THE COURT: Overruled.

19 A. Based on that, whatever I said to them, I
20 plead the Fifth.

21 Q. Okay. Did you also tell -- did you also
22 tell Mr. Roundy in 2013 that Troup had told you about
23 Sanchez's murder also in 2008?

24 A. Said what?

25 Q. Did you also tell Special Agent Roundy, in

1 2013, that Troup told you about Sanchez' murder in
2 approximately 2008?

3 A. No.

4 Q. Okay. So you didn't tell him that?

5 A. I don't remember. I don't recall. I don't
6 remember.

7 Q. All right. Do you remember you violated
8 your parole in approximately 2008, right?

9 A. Yeah, I think so.

10 Q. And because you violated your parole you
11 were in the prison system at that time, right?

12 A. I've been in prison a lot, yes.

13 Q. And so where it says here that Troup told
14 that to you in 2008, when you violated your
15 probation/parole and you were incarcerated in the New
16 Mexico prison system, that's true?

17 A. I was in prison?

18 Q. Right.

19 A. Sure, I think so.

20 Q. Okay. So that part of this is true?

21 A. That I was in prison? Yes.

22 MS. ROGERS: I'm sorry, just to clarify,
23 when you're saying "this," are you talking about the
24 statement we were just looking at? I don't know what
25 "this" is.

1 Q. Okay. Mr. Garcia, where you say here --
2 where you told Mr. Roundy, "Additionally, during the
3 same conversation, Troup provided" -- blank -- "with
4 information regarding his role in the murder of
5 Pancho," do you remember telling Mr. Roundy that?

6 MR. BURKE: Asked and answered. Now he's
7 pestering the witness.

8 THE COURT: Overruled.

9 A. I don't remember.

10 Q. Would it refresh your memory if I showed
11 you Mr. Roundy's report of your conversation?

12 A. If you want to.

13 Q. Sure.

14 MR. BECK: May I approach, Your Honor?

15 THE COURT: You may.

16 Q. All right. Mr. Garcia, I'm showing you the
17 same report that I just showed you below the
18 paragraph we just read. So it says blank "stated
19 that Troup had told him about Sanchez' murder in
20 approximately 2008, when" -- blank -- "violated his
21 probation/parole and was incarcerated in the New
22 Mexico prison system." Do you see that?

23 A. Um-hum.

24 Q. And it's true, isn't it -- I think you just
25 said this -- that in 2008, you violated your

1 probation/parole and you were incarcerated during
2 that time, right?

3 A. Yes.

4 Q. And so, "Additionally during the same
5 conversation Troup provided" -- blank -- "with
6 information regarding his role in the murder of
7 Pancho." Do you see where it says that?

8 A. Um-hum.

9 Q. And that's true, isn't it --

10 A. No.

11 Q. -- that Troup told you, in 2008, that he
12 provided you information about his murder of Pancho,
13 right?

14 MR. BURKE: Objection, asked and answered.

15 THE COURT: Overruled.

16 A. You're saying me and Troup were together in
17 2008?

18 Q. Right.

19 A. No, we weren't.

20 Q. Okay. So here, when you say that --

21 A. You have to tell me what you're saying,
22 that me and him were together incarcerated. We never
23 were.

24 Q. So here in approximately 2008 --

25 A. We don't even like each other.

1 Q. Okay. So let me ask you this question now.
2 Where it says here that you stated "Troup told you
3 about Sanchez' murder in 2008, when you were
4 incarcerated in the New Mexico prison system," is it
5 your testimony today that that's not true?

6 A. I don't know. I don't understand the
7 question.

8 Q. Let me ask it again. Here, where it says
9 that Troup told you about Sanchez' murder in
10 approximately 2008, when you violated your
11 probation/parole, and you were incarcerated in the
12 New Mexico prison system, is that not true?

13 MR. BURKE: Objection. This now has been
14 asked a half dozen times. That is enough, I believe,
15 Your Honor.

16 THE COURT: Overruled.

17 MS. ROGERS: He's asking about witnesses
18 here in the statement.

19 THE WITNESS: That I told him that?

20 MS. ROGERS: Can you ask it again, please?

21 A. I don't understand it.

22 THE COURT: I think, Mr. Beck, you better
23 leave that microphone so Mr. Garcia's voice -- turn
24 it down just a little bit, Mr. Garcia, so it's
25 pointing. There you go.

1 Q. So where it says in this report that you
2 said that Troup told you about Sanchez' murder in
3 approximately 2008, when you violated your probation
4 and parole, and you were incarcerated in the New
5 Mexico prison system, you're saying that's not true?

6 A. I don't remember it. You know, if -- and I
7 understand that me and Huero were never in a facility
8 together, so I don't remember that, me telling the
9 FBI agent that. All right, so --

10 Q. Do you remember Mr. Troup telling you, in
11 approximately 2008, that he killed Freddie Sanchez?

12 A. No, because --

13 MR. BURKE: Objection, asked and answered.

14 A. Because me and Huero Troup never liked each
15 other. So in 2008, no.

16 Q. So where it says here, "Additionally, the
17 same conversation Troup provided you with information
18 regarding his role in the murder of Pancho," is it
19 your story that this also is not true?

20 MS. ROGERS: Do you need a second?

21 A. Yes.

22 MS. ROGERS: Your Honor, can we have a
23 brief sidebar?

24 THE COURT: You may.

25 (The defendant conferred with counsel.)

1 MS. ROGERS: Thank you, Your Honor. Sorry,
2 Mr. Beck.

3 Q. So I asked you a question.

4 A. Go ahead.

5 MR. BECK: Ms. Bean, can you read that
6 back, please?

7 THE COURT: The question is: So where it
8 says here, "Additionally the same conversation Troup
9 provided you with information regarding his role in
10 the murder of Pancho."

11 A. I don't remember saying that.

12 Q. Pancho is Fred Castillo, right?

13 A. I don't know.

14 Q. Pancho was killed in 2001 in the Southern
15 New Mexico Correctional Facility; you know that?

16 A. I heard of it, but I don't know who he is.

17 Q. You heard of it from Troup when he told you
18 about it, right?

19 A. No.

20 Q. No, that's not where you heard of it?

21 A. I don't remember.

22 Q. And where it says Troup told you that Billy
23 Garcia, a/k/a Wild Bill, gave the order to kill
24 Pancho, that's true, right?

25 MR. BURKE: Asked and answered, Your Honor.

1 Now he's just pestering the witness.

2 THE COURT: Overruled, Mr. Burke.

3 A. Go ahead. What's the question?

4 Q. Where it says Troup told you that Billy
5 Garcia, a/k/a Wild Bill, gave the order to kill
6 Pancho; that's true, right?

7 A. I don't remember.

8 Q. Now, you know that Billy Garcia did, in
9 fact, put the order in to kill Pancho, right?

10 A. Who is Billy Garcia?

11 MR. CASTLE: I'm going to object. That
12 assumes that --

13 A. Can you tell me who Billy Garcia is?

14 THE COURT: Overruled. He can answer.

15 A. I don't know what you're talking -- I don't
16 know who he is.

17 Q. So you don't know who Billy Garcia, a/k/a
18 Wild Bill, is?

19 A. I heard of him. Remember I told you I
20 heard of him, but I don't know who he is.

21 Q. That wasn't my question. I said: You know
22 that Billy Garcia gave the order to kill Pancho,
23 don't you?

24 A. No.

25 Q. And so when you told FBI Special Agent

1 Roundy, in 2013, that Troup told you that Billy
2 Garcia, a/k/a Wild Bill, gave the order to kill
3 Pancho, that was a lie?

4 MR. BURKE: That isn't --

5 THE COURT: Well, I'm going to sustain.
6 That question has a lot of problems. Sustained.

7 Q. So was it not true when you told Special
8 Agent Roundy, in 2013, that Troup told you that Billy
9 Garcia, a/k/a Wild Bill --

10 MR. BURKE: Object --

11 THE COURT: Sustained.

12 Q. So you told Special Agent Roundy that Troup
13 told you that Troup walked into Pancho's cell where
14 Angel DeLeon and others were waiting for Pancho?

15 MR. BURKE: Objection.

16 THE COURT: Overruled.

17 Q. My question is: Didn't you tell Special
18 Agent Roundy, in 2013, that Troup told you that he
19 walked into Pancho's cell, where Angel DeLeon and
20 others were waiting for Pancho?

21 A. I don't remember that. I don't remember
22 telling him that.

23 Q. Would it refresh your recollection if I
24 showed you Mr. Roundy's report?

25 A. Yes, but I don't remember.

1 MR. BECK: May I approach, Your Honor?

2 THE COURT: Well, let's talk a little bit
3 about scheduling. How much longer are you going to
4 go, Mr. Beck?

5 MR. BECK: Well, probably another 15
6 minutes, Your Honor.

7 THE COURT: Are you available to come back
8 tomorrow, Ms. Rogers, at 8:30 in the morning?

9 MS. ROGERS: I am, Your Honor.

10 THE COURT: Are you available, Mr. Garcia?

11 THE WITNESS: Not really. But if I have
12 to, I'll be here.

13 THE COURT: All right. Well, we've gone
14 longer -- we were trying to accommodate Mr. Garcia
15 and get him out of there, but if the Government is
16 going to take another 15 minutes, I think we better
17 let everybody go. The transportation people are all
18 waiting. And we've gone longer on this day than we
19 have in two months. So I apologize we couldn't get
20 it done.

21 All right. See y'all tomorrow at 8:30 in
22 the morning.

23 (The Court stood in recess.)
24
25


C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on March 24, 2018.



Jennifer Bean, FAPR, RMR-RDR-CCR
Certified Realtime Reporter
United States Court Reporter
NM CCR #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
Phone: (505) 348-2283
Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com